



The Municipal Corporation of the Town of Fort Erie

By-law No. 83-2023

Being a By-law to Regulate Public Nuisances and Noise in the Town of Fort Erie and to Repeal By-law No. 30-09

Whereas section 11 of the *Municipal Act, 2001*, S.O. 2001, c. 25 ("*Municipal Act, 2001*" or "the statute") provides that a lower-tier municipality may pass 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 by-laws respecting animals; and

Whereas section 128 of the *Municipal Act, 2001* provides that a local municipality may prohibit and regulate with respect to public nuisances, including matters that in the opinion of Council are or could become or cause a public nuisance; and

Whereas section 129 of the *Municipal Act, 2001* provides that a local municipality may prohibit and regulate with respect to noise and outdoor illumination, including indoor lighting that can be seen outdoors; and

Whereas section 425 of the *Municipal Act, 2001* provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under the statute is guilty of an offence; and

Whereas section 429 of the *Municipal Act, 2001* authorizes a municipality to establish a system of fines for offences under its by-laws; and

Whereas section 434.1 of the *Municipal Act, 2001* authorizes a municipality to establish a system of administrative monetary penalties to assist the municipality in promoting compliance with its by-laws; and

Whereas the Council of The Corporation of the Town of Fort Erie deems it necessary and desirable in the public interest to regulate public nuisances and noise in the municipality and to enact this By-law for that purpose;

Now therefore the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

1.0 SHORT TITLE

1.1 The short title of this By-law is the "Noise and Nuisance By-law".

2.0 DEFINITIONS

2.1 The following terms are defined for the purposes of this By-law:

"administrative penalty" means a monetary penalty administered pursuant to Town By-law No. 111-2019, as amended from time to time.

“agricultural operation” has the same meaning as in the *Farming and Food Production Protection Act*, 1998, S.O. 1998, c. 1

“animal” means any member of the animal kingdom other than a human.

“clearly audible” means that the sound or noise in question is easily perceptible, without undue effort, to a disinterested person with no hearing disability.

“construction” means erection, alteration, repair, dismantling, demolition, structural maintenance, land clearing, earth moving, grading, excavating, laying of pipe and conduit (whether below or above ground level), street and highway building, application of concrete, equipment installation and alteration, and structural installation of construction components and materials, in any form or for any purpose.

“Council” means the Council of The Corporation of the Town of Fort Erie.

“direct light” means light emitted directly from the lamp or reflector of a luminaire.

“enforcement authority” means an officer and any person appointed or otherwise delegated the authority of administration and enforcement of this by-law.

“exterior luminaire” means a luminaire that is situated outside of any building or structure, including those affixed to exterior walls or surfaces of any building or structure.

“garage sale” means a sale conducted at a property containing a residential use by its owner or occupant of household goods belonging to the owner or occupant, as the case may be, and includes a yard sale, lawn sale and other similar events.

“glare” means light emitted from a luminaire of sufficient intensity that (i) reduces the viewer’s ability to see; or (ii) produce a sensation of discomfort, to a disinterested person with no visual disability or undue sensitivity to light.

“highway” has the same meaning as in the *Highway Traffic Act*, R.S.O. 1990, c. H.8 (*“Highway Traffic Act”*).

“indirect light” means light emitted from a luminaire that has been reflected or scattered off other surfaces.

“inhabitants” means one or more persons who reside in the Town, temporarily or permanently, and may include visitors to the Town.

“interior luminaire” means a luminaire that is situated inside of any building or structure, including those affixed to interior walls or surfaces of any building or structure, which emits light that can be seen outdoors.

“luminaire” means a complete lighting device that includes one or more lamps enclosed in a housing and is accompanied by one or more reflectors, refractors or other similar items and, without limiting the generality of the foregoing, includes laser source lights, signal beacons, floodlights, spotlights, flashing lights, high-intensity lights and other forms of illumination.

“motor vehicle” has the same meaning as in the *Highway Traffic Act*.

“normal farm practice” has the same meaning as in the *Farming and Food Production Protection Act, 1998*.

“officer” means a by-law enforcement officer of the Town, a member of the Niagara Regional Police Service, a member of the Ontario Provincial Police and any other provincial offences officer designated under the *Provincial Offences Act*, R.S.O. 1990, c. P.33 (*“Provincial Offences Act”*).

“occupant” means a person that occupies a property and includes owners, renters and lessees.

“order” means any notice of non-compliance issued under this By-law.

“outdoor patio” means an outdoor area adjacent to or in any way associated with an eating establishment or tavern that is designed or used as an area for the sale and service of any food or beverage by the eating establishment or tavern.

“owner” means the registered owner of a property.

“persistent” means continuously for a period of ten (10) minutes or longer or intermittently for an aggregate period of ten (10) minutes or longer in any sixty (60) minute period.

“person” means an individual, corporation, partnership or association.

“point of reception” means any location on a property where noise originating from other than that property is received.

“property” means any land or premises within the Town.

“public nuisance” means any act, conduct or thing that is injurious to health, indecent, offensive to the senses of a disinterested person or that otherwise interferes with the reasonable enjoyment of life or property.

“Town” means The Corporation of the Town of Fort Erie or the geographic area of the municipality, as the context requires.

“trespassing light” means light emitted from a luminaire that is easily perceptible, without undue effort, to a disinterested person with no visual disability or undue sensitivity to light, at a property other than the one on which the luminaire is situated, and includes direct light, indirect light and glare.

3.0 NOISE

- 3.1 No person shall make, cause or permit an unreasonable noise or noise that is likely to disturb inhabitants.
- 3.2 Without limiting the generality of section 3.1, noise resulting from the following acts is deemed to be unreasonable noise or noise that is likely to disturb inhabitants:

- (a) the ringing of bells, blowing of horns or sounding of sirens on any motor vehicle except as required or authorized by law or for reasons of safety;
- (b) the operation of a motor vehicle in a manner that results in grading, grinding or rattling or other like sound or noise due to disrepair or inadequate maintenance;
- (c) the revving, racing or accelerating of a motor attached to a motor vehicle while the motor vehicle is not in motion;
- (d) the operation of any radio, television or other electronic device, musical or sound producing instrument with such volume so as to annoy or disturb inhabitants;
- (e) the operation of any radio, amplifier, speaker or similar sound producing device for the purpose of advertising a good or service in a manner that projects sound or noise into any public street or other public place;
- (f) the operation of any radio, amplifier, speaker or similar sound producing device in a manner that produces sound or noise that is clearly audible at a point of reception;
- (g) between the hours of 9:00 p.m. of one day and 7:00 a.m. of the following day, the operation of equipment used for construction;
- (h) the persistent yelling, shouting, swearing and/or speaking by any person at a volume that is clearly audible at a point of reception;
- (i) the persistent barking, howling, whining or other like sounds made by an animal kept or used for any purpose other than a normal farm practice carried on by an agricultural operation.
- (j) between the hours of 11:00PM of one day and 11:00AM of the following day, the operation of an outdoor patio in a manner that produces sound or noise that is clearly audible at a point of reception, if any part of such patio is located within 60 metres of a residential zone.

3.3 This By-law shall not apply to noise resulting from:

- (a) the operation of any emergency service vehicle or ambulance while carrying out its lawful duties;
- (b) the use of a warning device during the lawful operation of a motor vehicle;
- (c) the operation of any railway or airport within the legislative authority of Parliament;
- (d) the operation of equipment by or on behalf of the Town for exceptional construction projects, general maintenance projects and emergency projects of the Town;
- (e) the collection or disposal of garbage, waste or recyclable material by the Town or the Regional Municipality of Niagara;
- (f) the reasonable use of equipment for snow removal and yard maintenance on private property;

- (g) any parade or event hosted, authorized or approved by the Town, provided that the parade or event is carried on in accordance with all terms and conditions of the authorization or approval;
- (h) the reasonable use of a radio, amplifier, speaker or similar sound producing device in a public place during a special event hosted, authorized or approved by the Town, provided that the event is carried on in accordance with all terms and conditions of the authorization or approval;
- (i) any discharge of fireworks that complies with the fireworks by-law of the Town;
- (j) sports, exercise or recreational activities or events at public parks or public beaches where such activities or events have been authorized or approved by the Town and are carried on in accordance with all terms and conditions of the authorization or approval;
- (k) the operation of bells or chimes in relation to any religious or military ceremony;
- (l) activities that are part of a normal farm practice carried on by an agricultural operation; and
- (m) activities carried out in compliance with a permission granted under federal or provincial legislation, including but not limited to an environmental compliance approval.

4.0 LIGHTING

- 4.1 No person shall use or operate, or cause or permit the use or operation of, any exterior luminaire or interior luminaire in a manner that emits direct light, indirect light or glare such that it creates and/or results in trespassing light.
- 4.2 No person shall use or operate, or cause or permit the use or operation of, any exterior luminaire or interior luminaire in a manner that emits direct light, indirect light or glare such that it affects the operation of a motor vehicle on a highway by any person.
- 4.3 This By-law shall not apply to direct light, indirect light or glare resulting from:
 - (a) the operation of any emergency service vehicle or ambulance while carrying out its lawful duties;
 - (b) the use of vehicular lights during the lawful operation of a motor vehicle;
 - (c) the operation of equipment by or on behalf of the Town for construction projects, general maintenance projects and emergency projects of the Town;
 - (d) the operation of equipment by or on behalf of the Town for Town maintenance operations including but not limited to snow removal, street sweeping, line painting, grass cutting, tree and shrub pruning, mulching and field maintenance;

- (e) the reasonable use of luminaires during a special event hosted, authorized or approved by the Town, provided that the event is carried on in accordance with all terms and conditions of the authorization or approval;
- (f) sports, exercise or recreational activities or events at public parks or public beaches where such activities or events have been authorized or approved by the Town and are carried on in accordance with all terms and conditions of the authorization or approval;
- (g) activities that are part of a normal farm practice carried on by an agricultural operation; and
- (h) activities carried out in compliance with a permission granted under federal or provincial legislation.

5.0 PUBLIC NUISANCE

5.1 No person shall cause or permit a public nuisance.

5.2 Without limiting the generality of section 5.1, the following acts, conduct and things are deemed to be a public nuisance:

- (a) loitering in a public place after a request from an enforcement authority to leave;
- (b) fighting;
- (c) using profane or abusive language or gestures;
- (d) littering;
- (e) defacing, damaging or vandalizing public or private property;
- (f) spitting, expectorating, urinating or defecating in a public place;
- (g) public drunkenness or public intoxication;
- (h) conducting a garage sale at any property that does not have a residential use under Town By-law No. 129-90;
- (i) conducting a garage sale between the hours of 6:00 p.m. of one day and 8:00 a.m. of the following day;
- (j) conducting a garage sale more than four (4) times per calendar year;
- (k) the attracting and or feeding of animals domesticated or otherwise in such a way that is causes damage or otherwise creates a nuisance or disturbance to another person or another persons property, other than as part of a normal farm practice carried on by an agricultural operation
- (l) obstructing, interfering with or otherwise impeding the movement of persons or motor vehicles;
- (m) obstructing or attempting to obstruct an enforcement authority in the course of his or her duties; and
- (n) any act, conduct or thing prohibited by sections 3.2, 4.1 or 4.2 of this By-law.

- 5.3 Notwithstanding any other provisions in this By-law, the restrictions listed in Section 5.2(k) shall not apply to:

(a) properties zoned for agricultural or open space uses that are involved in dairying, animal husbandry, the raising of poultry, vermiculture, aquaculture, equestrian centres, riding stables and zoological theme parks.

6.0 ADMINISTRATION AND ENFORCEMENT

- 6.1 This By-law shall be administered and enforced by the Town and enforcement authorities.
- 6.2 An enforcement authority may, for the purpose of enforcing this By-law, exercise any power, authority or remedy granted to the Town pursuant to the *Municipal Act, 2001*.
- 6.3 An enforcement authority may, at all reasonable times, enter upon and inspect any property to determine if this By-law is being complied with.
- 6.4 For the purposes of an inspection under section 6.3 of this By-law, an enforcement authority may require the production for inspection of documents or things relevant to the inspection, inspect and remove relevant documents or things for the purpose of making copies or extracts, require information from a person concerning a matter related to the inspection and/or take photographs, samples, measurements necessary for the purposes of the inspection and may also include being accompanied by a person possessing special or expert knowledge.
- 6.5 An enforcement authority who is satisfied that there has been a contravention of this By-law may make an order requiring the person who contravened the By-law or caused or permitted the contravention and/or the owner or occupant of the property where the contravention occurred to discontinue the contravening activity and/or to bring the property into compliance with this By-law.
- 6.6 No person shall fail to comply with an order made under section 6.5.
- 6.7 An order made under section 6.5 shall set out the municipal address and/or legal description of the property, reasonable particulars of the non-compliance and the work required to correct it and the date(s) by which there must be compliance with the order.
- 6.8 An order made under section 6.5 may be served by regular mail if the order is also posted at the property, registered mail or hand delivered to the last known address of the person to whom it is issued, by email to the last known email address of the person to whom it is issued, or by posting the order at the property where the contravention occurred.
- 6.9 Where any person fails to comply with an order made under section 6.5 by the prescribed date(s), the Town may do any matter or thing necessary to bring the property into compliance with this By-law at the expense of the person in default of the order.

- 6.10 The Town may recover the cost of any matter or thing done pursuant to section 6.8 of this By-law by adding the cost to the tax roll and collecting it in the same manner and with the same priority as municipal taxes.
- 6.11 No Person shall obstruct or hinder, or attempt to obstruct or hinder, an enforcement authority in the exercise of a power or the performance of a duty under this By-law.

7.0 OFFENCES AND PENALTIES

- 7.1 Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to such penalties as are provided for in the *Municipal Act, 2001* and the *Provincial Offences Act*.
- 7.2 Where an enforcement authority is satisfied that a person has failed to comply with any provision of this By-law, the enforcement authority may issue a penalty notice imposing an administrative penalty in the amount as established in Schedule "A" to this By-law.
- 7.3 Administrative Penalty By-law No. 111-2019, as amended or replaced from time to time, applies to each administrative penalty issued pursuant to this by-law.
- 7.4 Every person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty By-law No. 111-2019, be liable to pay to the Town an administrative penalty in accordance with that By-law.

8.0 GENERAL

- 8.1 In the event of a conflict between this By-law and the provisions of another Town by-law, the provisions of this By-law shall prevail.
- 8.2 If any section or part of this By-law is found by any court of competent jurisdiction to be illegal or beyond the power of Council to enact, such sections or parts shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent therefrom and to be enacted as such.
- 8.3 This By-law shall be read with all changes in number or gender as are required by context.
- 8.4 Any reference to legislation or Municipal By-laws in this By-law includes the legislation or By-law and any amendment, replacement, subsequent enactment or consolidation of such legislation or By-law.
- 8.5 The Clerk of the Town is authorized to affect any minor modifications, corrections or omissions, solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.
- 8.6 By-law No. 30-09 is repealed.

8.7 This By-law shall come into force and effect on the date of passage.

Read a first, second and third time and finally passed this 29th day of May, 2023.

Mayor

Clerk

I, _____, Clerk of The Corporation of the Town of Fort Erie, certify the foregoing to be a true copy of By-law No. 83-2023 of the said Town. Given under my hand and the seal of the said Corporation, this _____ day of _____, 20____

**SCHEDULE “A”
to Noise and Nuisance By-law No. 83-2023**

Administrative Monetary Penalties

For the purposes of this By-law:

Column 1 (“Description of Offence”) in the table sets out the short form wording to be used in a Penalty Notice for a contravention of the designated provisions listed.

Column 2 (“Section”) in the table lists the specific section of the provision that has been contravened.

Column 3 (“Penalty Tier 1”) sets out the Administrative Monetary Penalty amounts that are payable for contraventions of the designated provisions listed in Columns 1 and Column 2.

Column 4 (“Penalty Tier 2”) sets out the Administrative Monetary Penalty amounts that are payable for a second (2nd) contravention of the designated provisions listed in Columns 1 and Column 2 by the same person within a one (1) year period since the previous offence conviction.

Column 5 (“Penalty Tier 3”) sets out the Administrative Monetary Penalty amounts that are payable for a third (3rd) contravention of the designated provisions listed in Columns 1 and Column 2 by the same person within a one (1) year period since the previous offence conviction.

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
Offence	Section	Penalty Tier 1	Penalty Tier 2	Penalty Tier 3
Unreasonable noise or noise likely to disturb inhabitants	3.1	\$250.00	\$350.00	\$450.00
Noise deemed to be unreasonable or likely to disturb inhabitants	3.2 (a-j)	\$250.00	\$350.00	\$450.00
Trespassing light	4.1	\$250.00	\$350.00	\$450.00
Light affecting operation of motor vehicle on highway	4.2	\$250.00	\$350.00	\$450.00
Public nuisance	5.1	\$250.00	\$350.00	\$450.00
Act, conduct or thing deemed to be a public nuisance	5.2 (a-n)	\$250.00	\$350.00	\$450.00
Fail to comply with an order	6.6	\$500.00	\$600.00	\$700.00
Obstruct an officer	6.11	\$300.00	N/A	N/A