

CORPORATION OF THE MUNICIPALITY OF WEST PERTH

BY-LAW NO. 053-2009

**A By-law of the Corporation of the Municipality of West Perth
to regulate and control noise**

WHEREAS Sections 9, 11 and 129 of the Municipal Act, 2001, S.O. 2001, Chapter 25, Section 129 (the "Act") provides that by-laws may be passed by the Councils of local municipalities for prohibiting or regulating noise and vibration within the Municipality;

WHEREAS a recognized body of scientific and technological knowledge exists by which sound and vibration may be substantially reduced; and

WHEREAS the people have a right to and should be ensured an environment free from unusual, unnecessary or excessive sound or vibration which might degrade the quality and tranquility of their life or cause nuisance; and

WHEREAS it is the policy of the Council of the Municipality of West Perth to reduce and control such sound and vibration;

NOW THEREFORE, the Council of the Municipality of West Perth enacts as follows:

1. That By-law 30-2005 is hereby repealed;
2. Interpretation

In this By-law,

(a) By-law Enforcement Officer

"By-law Enforcement Officer" means a person designated by Council as responsible for the enforcement of this By-law,

(b) Construction

"Construction" includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, moving, land clearing, earth moving, grading, excavating, the laying of pipe and conduit whether above or below ground level, street and highway building, concreting, equipment installation and alternation and the structural installation of construction components and materials in any form or for any purpose, and includes any work in connection therewith;

(c) Construction Equipment

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

(d) Conveyance

"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;

(e) Council

“Council” means the Council of the Corporation of the Municipality of West Perth.

(f) Highway

“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;

(g) Minister

“Minister” means Minister of the Environment;

(h) Ministry

“Ministry” means Ministry of the Environment;

(i) Motor Vehicles

“Motor vehicles” includes an automobile, motorcycle, and any other vehicle propelled or driven otherwise than by muscular power; but does not include the cars of electric or steam railways, or other motor vehicles running only upon rails, or a motorized snow vehicle, a motor assisted bicycle, traction engine, farm tractor, self-propelled implement of husbandry or road-building machines.

(j) Motorized Conveyance

“Motorized Conveyance” means a conveyance propelled or driven otherwise than by muscular, gravitational or wind power;

(k) Municipality

“Municipality” means the land within the geographic limit of the Corporation of the Municipality of West Perth;

(l) Noise

“Noise” means unwanted sound;

(m) Point of Reception

“Point of Reception” means any point of the premises of a person where sound or vibration originating from other than those premises is received;

(n) Police Officer

“Police Officer” means a member of the Ontario Provincial Police.

(o) Premises

“Premises” means building and lands appurtenant thereto;

(p) Zones

In this By-law,

(i) Residential Zone

“Residential Zone” means those areas of the Municipality specified in the West Perth Zoning By-law as follows: Mitchell Residential Low Density Zone One (R1), Mitchell Residential Low Density Zone Two (R2), Mitchell Residential Medium Density Zone Three (R3), Mitchell Residential High Density Zone Four (R4), Hamlet/Village Residential Zone (HVR), Mobile Home/Modular Zone (MH) and any amendments made from time to time.

(ii) Agricultural Zone

“Agricultural Zone” means those areas of the Municipality specified in the West Perth Zoning By-law as follows: Agricultural Zone (A) and any amendments made from time to time.

(iii) Business Zone

“Business Zone” means those areas of the Municipality specified in the West Perth Zoning By-law as follows: Agricultural Commercial/ Industrial Zone (ACM), Core Area Commercial Zone (C1), Hamlet/Village Commercial Zone (C2), Highway Commercial Zone (C3), Secondary Commercial Zone (C4), Light Industrial Zone (M1), General Industrial Zone (M2) and any amendments made from time to time.

(iv) Quiet Zone

“Quiet Zone” means those areas of the Municipality specified in the West Perth Zoning By-law as follows: Institutional Zone (I) and any amendments made from time to time.

(v) Open Space Areas

“Open Space Areas” means those areas of the Municipality specified in the West Perth Zoning By-law as follows: Mineral Aggregate Resources Zone (MAR), Park and Recreation Zone (PR), Natural Resources/Environment Zone One (NRE1), Natural Resources/Environment Zone Two (NRE2), Flood Plane (FP), Flood and Fill Constraint Area Overlay (FFCA) and any amendments made from time to time.

3. General Prohibitions

No person shall emit or cause or permit the emission of sound resulting from the following acts, and which sound is clearly audible at the point of reception;

1. Racing of any motorized conveyance other than in a racing event regulated by law.
2. The operation of a motor vehicle in such a way that the tires squeal.
3. The operation of any combustion engine or pneumatic device without proper exhaust or intake muffling devices meeting specifications of the manufacturer in good working order and in constant operation.
4. The operation of a vehicle or a vehicle with a trailer resulting in banging, clanking, squealing or other like sounds due to improperly secured load or equipment, or inadequate maintenance.

5. The operation of an engine or motor in, or on, any motor vehicle or item of attached auxiliary equipment for a continuous period exceeding five minutes, while such vehicle is stationary in a residential area or unless:
 - (i) The original equipment manufacturer specifically recommends a longer idling period for normal and efficient operation of the motor vehicle in which case such recommended period shall not be exceeded; or
 - (ii) Operation of such engine or motor is essential to a basic function of the vehicle or equipment, including but not limited to operation of ready mixed concrete trucks, lift platforms and refuse compactors, or;
 - (iii) Weather conditions justify the use of heating or refrigerating systems powered by the motor or engine for the safety and welfare of the operator, passengers or animals, or the preservation of perishable cargo, and the vehicle is stationary for purposes of delivery or loading; or;
 - (iv) Prevailing low temperatures make longer idling periods necessary immediately after starting the motor or engine, or,
 - (v) The idling is for the purpose of cleaning and flushing the radiator and associated circulation system for seasonal change of anti-freeze, cleaning of the fuel system, carburetor or the like, when such work is performed other than for profit.
6. The operation of a motor vehicle horn or other warning device except where required or authorized by law.
7. The operation of any item of construction equipment in a residential area without proper muffling devices meeting specifications of the manufacturer in good working order and in constant operation.

4. Prohibitions by Time and Place

No person shall emit or cause or permit the emission of sound resulting from any act listed in Schedule "A" to this By-law, if clearly audible at a point of reception located in an area of the Municipality indicated within a prohibited time shown for such an area.

5. Exemption

Public Safety

Notwithstanding any other provision of this by-law, it shall be lawful during an emergency to emit or cause or permit the emission of sound or vibration in connection with emergency measures undertaken;

- (a) For the immediate health, safety or welfare of the inhabitants of them; or
- (b) For the sounds of any bell, horn, siren or other signaling device associated with any emergency or law enforcement vehicle,
- (c) For any noise arising from emergency road work or road improvements undertaken by or on behalf of the Municipality of West

Perth, County of Perth or the Ministry of Transportation of Ontario.

- (d) Necessary municipal operations, including but not limited to snow plowing or snow removal equipment, snow clearing, or for the cleaning of streets or sidewalks and garbage collection, or for any other road or utility maintenance undertaken by or on behalf of the Municipality of West Perth.
- (d) For the preservation or restoration of property; unless such sound or vibration is clearly of a longer duration or nature more disturbing, than is reasonably necessary for the accomplishment of such emergency purpose.

6. Grant of Exemption by Council

(1) Application to Council

Notwithstanding anything contained in this by-law any person may make application to Council to be granted an exemption from any of the provisions of this by-law with respect to any source of sound or vibration for which he might be prosecuted and Council by resolution, may refuse to grant any exemption or may grant the exemption applied for or any exemption of lesser effect and any exemption granted shall specify the time period during which it is effective and may contain such terms and conditions as Council sees fit.

(2) Decision

In deciding whether to grant the exemption, Council shall consider the application and any written submission then received by Council and made by the applicant and the Council may consider such other matters as it sees fit.

(3) Breach

Breach by the applicant of any of the terms or conditions of any exemption granted by Council shall render the exemption null and void.

7. Exemption of Traditional, Festive or Religious Activities

Notwithstanding any other provision of this by-law, this by-law does not apply to a person who emits or causes or permits the emission of sound or vibration in connection with any of the following listed traditional, festive, religious and other activities:

- (1) Any activity by a religious congregation or religious organization and dedicated exclusively to worship and related religious, social and charitable activities.
- (2) Any activities as may be necessary for the construction and maintenance of any public works.
- (3) Any activity sponsored or approved by the Mitchell Agricultural Society.
- (4) Any activity of a Service Club that is operating for fundraising purposes for community benefit as may be approved by Council.

8. Industrial Exemption

Notwithstanding any other provision of this By-law, this By-law does not apply to a person or industry who emits or causes or permits the emission of sound or vibration in connection with an established industrial function.

9. Agricultural Exemption

Notwithstanding any other provision of this By-law, this By-law does not apply to a person or agricultural procedure who emits or causes or permits the emission of sound or vibration in connection with an established agricultural function.

10. Severability

If a court of competent jurisdiction should declare any section or part of a section of the By-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of the By-law and it is hereby declared that the remainder of the By-law shall be valid and shall remain in force.

11. Enforcement/Penalty

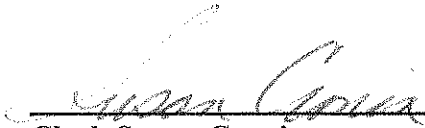
- (i) Every By-law Enforcement Officer appointed by the Municipality of West Perth or Police Officer is authorized to enforce this By-law and, for the purpose may enter at all reasonable times upon any real property in order to ascertain whether the provisions of this By-law are being observed.
- (ii) Any person who contravenes any of the provisions of this by-law is guilty of an offence and shall, upon conviction thereof, forfeit and pay a set fine, and every such fine is recoverable under the Provincial Offences Act, R.S.O. 1990 Chapter P33.
- (iii) This By-law may be enforced by means of a ticket in the form prescribed in the "Set Fine Schedule" attached hereto as Schedule "B" to this By-law.
- (iv) Each Day such violation is committed, or permitted to continue, shall constitute a separate offence and may be punishable as such there under. Such fine shall be recoverable under the Provincial Offences Act, as amended;
- (v) Where a person has been convicted of an offence under this By-law, the Court may in addition to any other penalty imposed on the person convicted, issue an Order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted directed toward the continuation or repetition of the offence;
- (vi) Every person who fails to comply with an Order to conform to the provisions of this By-law is guilty of an offence and is liable to prosecution and penalty pursuant to the Provincial Offences Act, as amended.

Read a first and second time this 24th day of August, 2009.

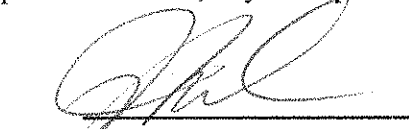
Seal



Mayor John Van Bakel


Clerk Susan Cronin

Read a third and final time and finally passed this 14th, day of September 2009.


Mayor John Van Bakel

Seal


Clerk Susan Cronin

THE CORPORATION OF THE MUNICIPALITY OF WEST PERTH
SCHEDULE "A" TO BY-LAW NO. 053-2009

PROHIBITIONS BY TIME AND PLACE
(Section 3)

PROHIBITED PERIOD OF TIME					
	QUIET ZONE	RESIDENTIAL ZONE	OPEN SPACE AREA	BUSINESS ZONE	AGRICULTURAL ZONE
1. The detonation of fireworks or explosives not used in construction.	At all times, except fireworks on Victoria Day and Canada Day	At all times, except fireworks on Victoria Day and Canada Day	At all times, except fireworks on Victoria Day and Canada Day	At all times, except fireworks on Victoria Day and Canada Day	At all times, except fireworks on Victoria Day and Canada Day
2. Unlawful discharge of firearms	At all times.	At all times.	At all times.	At all times.	At all times.
3. The operation of combustion engine (toy or model)	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day
4. Electronic devices intended for the production, reproduction or amplification of sound.	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day
5. Auditory signaling device including but not limited to the ringing of bells or gongs and the blowing of horns or sirens or whistles or the productions, reproduction or amplification of any similar sounds by electronic means except where required or authorized by law or in an accordance with good safety practices.	2100 hours one day to 0700 the next day and all day Sunday and Statutory holidays	2100 hours one day to 0700 the next day and all day Sunday and Statutory holidays	2100 hours one day to 0700 the next day and all day Sunday and Statutory holidays	2100 hours one day to 0700 the next day and all day Sunday and Statutory holidays	2100 hours one day to 0700 the next day and all day Sunday and Statutory holidays
6. The operation of any motorized conveyance other than on a highway or other place intended for its operation.	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day
7. The persistent barking, calling or whining or other similar persistent noise making by any domestic pet, or any other animal.	At all times	At all times	At all times	At all times	At all times
8. Excessive yelling, shouting, hooting, whistling or singing.	At all times	At all times	At all times	At all times	At all times
9. Loading, unloading, packing or otherwise handling of containers etc. unless necessary for the maintenance of an essential service.	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day
10. The operation of any equipment connection with construction.	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day
11. The operation or use of any tool for domestic purposes other than snow removal.	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day
12. Cause or allow the emission of any unreasonable or unusual noise or vibration by means of the use or operation of any electrical motor, electrical, mechanical, hydraulic or pneumatic device, internal combustion engine or other mechanical or like device.	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day	2100 hours one day to 0700 the next day

THE CORPORATION OF THE MUNICIPALITY OF WEST PERTH
 BY-LAW 053-2009: NOISE
 SCHEDULE "B" – SET FINE SCHEDULE
 Part 1, Provincial Offences Act

Item	Column 1 Short Form Wording	Column 2 Provision creating or defining offence	Column 3 Set Fine
1	Causing or permitting vibration likely to disturb	Section 4 Schedule A (12)	\$175
2	Causing or permitting noise by racing a motorized vehicle	Section 3 (1)	\$350
3	Causing or permitting noise by squealing of tires	Section 3 (2)	\$350
	Causing or permitting noise by operation of combustion engine without exhaust in good working order	Section 3 (3)	\$350
5	Causing or permitting noise by the operation of a motor vehicle with a trailer	Section 3 (4)	\$350
6	Causing or permitting noise by operation of a motor vehicle or equipment for more than 5 minutes	Section 3 (5)	\$350
7	Causing or permitting noise by operating any mechanical equipment that is not properly maintained.	Section 3 (7)	\$350
8	Causing or permitting noise from a motor horn or other warning device.	Section 3 (6)	\$350
9	Causing or permitting noise from a conveyance.	Section 4 Schedule A (6)	\$350
10	Persistent barking, calling, whining of a domestic pet.	Section 4 Schedule A (7)	\$350
11	Causing or permitting any auditory signaling.	Section 4 Schedule A (5)	\$350
12	Causing or permitting noise from detonation of fireworks.	Section 4 Schedule A (1)	\$350
13	Yelling, shouting, hooting, whistling or singing	Section 4 Schedule A (8)	\$350
14	Causing or permitting noise from a combustion engine	Section 4 Schedule A (3)	\$350
15	Causing or permitting noise from an electronic device or sound producing equipment	Section 4 Schedule A (4)	\$350
16	Causing or permitting noise from loading, unloading of materials	Section 4 Schedule A (9)	\$350
17	Causing or permitting noise by operating of any equipment in connection with construction.	Section 4 Schedule A (10)	\$350
18	Causing or permitting noise by operating a tool for domestic purposes	Section 4 Schedule A (11)	\$350
19	Causing or permitting noise by unlawful use of a firearm.	Section 4 Schedule A (2)	\$350

Note: the general penalty provision for the offences listed above is section 11 of bylaw 053-2009, a certified copy of which has been filed.

THE HONOURABLE KATHLEEN E. MCGOWAN
REGIONAL SENIOR JUSTICE
ONTARIO COURT OF JUSTICE
WEST REGION

80 DUNDAS STREET, 15TH FLOOR, UNIT G
LONDON, ONTARIO N6A 6B3



L'HONORABLE KATHLEEN E. MCGOWAN
JUGE PRINCIPALE RÉGIONALE
COUR DE JUSTICE DE L'ONTARIO
RÉGION DE L'OUEST

80, RUE DUNDAS, 15^E ÉTAGE, UNITÉ G
LONDON (ONTARIO) N6A 6B3

TELEPHONE/TÉLÉPHONE (519) 660-2292
FAX/TÉLÉCOPIEUR (519) 660-3138

December 4, 2009

Ms. Susan Cronin
Municipal Clerk
169 St. David Street, P.O. Box 609
Mitchell, Ontario
N0K 1N0

Dear Ms. Cronin:


Re: Set Fines - Provincial Offences Act - Part I
By-law Number 053-2009, of the Municipality of West Perth

Enclosed herewith is a copy of an Order, and a copy of a schedule of set fines for the above referenced By-Law, the By-law indicated in the schedule.

The setting of the fines does not constitute my approval of the short form of wording used to describe the offences.

I have forwarded the copy of the Order and the schedule of set fines to the Provincial Offences Court in Stratford together with a certified copy of the By-law.

Yours truly,


Kathleen E. McGowan
Regional Senior Justice
West Region

Enclosures

/pp

cc: Manager, Provincial Offences

RECEIVED

DEC 14 2009

Two West Perth
INITIALS _____

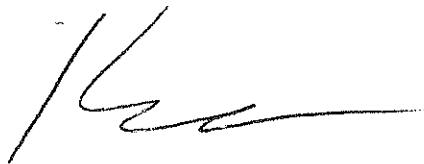
ONTARIO COURT OF JUSTICE

PROVINCIAL OFFENCES ACT

PART I

IT IS ORDERED pursuant to the provisions of the Provincial Offences Act and the rules for the Ontario Court of Justice that the amount set opposite each of the offences in the schedule of offences under the Provincial Statutes and Regulations thereunder and Municipal By-law No. 053-2009, of the Municipality of West Perth attached hereto are the set fines for those offences. This Order is to take effect December 4, 2009.

Dated at London this 4th day of December 2009



Kathleen E. McGowan
Regional Senior Justice
West Region