

THE CORPORATION OF THE TOWN OF MIDLAND

BY-LAW 2009-104

A By-law to Regulate Noise within the Town of Midland and to repeal By-law 97-54.

WHEREAS Section 129, of *The Municipal Act*, 2001, S.O. c. 25, provides authority for municipalities to prohibit and regulate noise and vibration;

AND WHEREAS The Council of the Corporation of the Town of Midland deems it necessary to regulate or prohibit noise within the Town of Midland;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MIDLAND HEREBY ENACTS AS FOLLOWS:

1. DEFINITIONS

- (a) **“commercial area”** means those areas of the Municipality zoned for commercial use in the Municipality’s Zoning Bylaw.
- (b) **“construction”** means the 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 alteration and structural installation of construction components and materials in any form or for any purpose, and includes work in connection therewith.
- (c) **“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”** means 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”** means the Council of the Corporation of the Town of Midland.
- (f) **“highway”** means any lands dedicated as 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 or pedestrians.
- (g) **“industrial area”** means those areas of the Municipality zoned for industrial use in the Municipality’s Zoning Bylaw.
- (h) **“ministry”** means the Ministry of the Environment.
- (i) **“motor vehicle”** means an automobile, motorcycle, and any other vehicle propelled or driven otherwise than by muscular power, but does not include the cars of railways; or any other motor vehicles running only upon rails, or a motorized snow vehicle, off road vehicle, all terrain vehicle, traction engine, farm tractor, self propelled implement of husbandry or road-building machine within the meaning of *The Highway Traffic Act*, R. S. O. 1990, c. H. 8, as amended.
- (j) **“motorized conveyance”** means a conveyance propelled or driven otherwise than by muscular, gravitational or wind power.
- (k) **“noise”** means either:
 - (i) unwanted or meaningless sound that exceeds an average of 90 decibels as measured at the point of reception by a qualified noise professional in accordance with the practices, policies and procedures of the Ministry of Environment, or
 - (ii) unwanted or meaningless sound that in the opinion of the Officer is likely to disturb the inhabitants of the municipality.
- (l) **“officer”** means an Municipal Law Enforcement Officer, a Police Officer or any other person designated by Council as responsible for the administration of this by-law from time to time.
- (m) **“person”** means any human being, association, firm, partnership, incorporated company, corporation, agent or trustee, and the heirs, executors or other legal representatives of a person to whom the context can apply, according to law.
- (n) **“point of reception”** means any point on the premises of a person where sound originating from other than those premises is received.

- (o) **“residential Area”** means those areas of the Municipality zoned for residential, open space and institutional use in the Municipality’s Zoning Bylaw.
- (p) **“rural area”** means those areas of the Municipality zoned for rural and environmental protection in the Municipality’s Zoning Bylaw.
- (q) **“Town”** means The Corporation of the Town of Midland.
- (r) **“urban area”** means the areas of the Municipality designated as urban areas of settlement in the Municipality’s Official Plan.
- (s) **“vibration”** means to shake, quiver, throb, move back and forth rapidly, usually in an uncontrolled manner.

2. **GENERAL PROHIBITIONS:**

No Person within the boundary of the Town shall emit or cause or permit the emission of Noise resulting from an act listed herein, and which Noise is clearly audible at a Point of Reception:

- (a) Racing of any motor vehicle or motorized conveyance other than in a racing event permitted by law.
- (b) The operation of a motor vehicle or motor conveyance in such a way that the tires squeal.
- (c) The operation of any combustion engine or pneumatic device without an exhaust or intake muffling device in good working order and in constant operation as specified by the unit’s manufacturer.
- (d) The operation of a motor vehicle or a motor vehicle with a trailer resulting in banging, clanging, squealing or other like sounds due to improperly secured load or equipment, or inadequate maintenance.
- (e) 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 motor vehicle is stationary in a residential area 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 motor 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 engines for the safety and welfare of the operator, passengers or animals, or the preservation of perishable cargo, and the motor 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 antifreeze, cleaning of the fuel system, carburetor or the like, when such work is performed other than for profit.
- (f) The operation of a motor vehicle horn or other warning device except where required or authorized by law or in accordance with good safety practices.
 - (g) The operation of any item of construction equipment in a residential area, rural area or commercial area without effective muffling devices in good working order and in constant operation.
 - (h) Any unwanted or meaningless sound that in the opinion of the Officer is likely to disturb the inhabitants of the Town.

3. PROHIBITIONS BY TIME AND PLACE:

No Person within the Town shall emit or cause the emission of noise resulting from any act listed in Schedule A, attached hereto, forming part of this by-law, hereinafter set out, if clearly audible at a point of reception located in an area of the Town within a prohibited time shown for such an area.

4. EXEMPTION FOR PUBLIC SAFETY:

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

- (a) for the immediate health, safety or welfare of the inhabitants or any of them; or

- (b) for the preservation or restoration of property; unless such noise or vibration is clearly of a longer duration or nature more disturbing, than is reasonably necessary for the accomplishment of such emergency purpose.

5. EXEMPTION OF TRADITIONAL, FESTIVE OR RELIGIOUS ACTIVITIES:

Notwithstanding any other provisions of this by-law, this by-law does not apply to a Person who emits or causes or permits the emission of noise or vibration in connection with:

- (a) a special event approved by Council;
- (b) ringing of Church bells or chimes;
- (c) bona-fide farming operations;
- (d) school bell or electronic signal at a school.

6. EXEMPTION OF ESSENTIAL SERVICES:

Notwithstanding any other provisions of this by-law, essential services and incidental noise from all activities of the Town, the County of Simcoe, the Province of Ontario, any utility provider, or their servants or agents associated with the provision of maintenance and essential services is permissible.

7. GRANT OF EXEMPTION BY COUNCIL:

(a) **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 noise or vibration for which he/she might be prosecuted and Council, by resolution, may deny or grant the exemption.

(b) **Decision**

In deciding whether to grant the exemption, Council shall give the applicant and any person opposed to the application an opportunity to be heard and may consider such other matters as it deems necessary.

(c) **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.

8. SEVERABILITY:

If any court of competent jurisdiction should declare any section of this 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.

9. PENALTY:

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 penalty of not more than Five Thousand Dollars (\$5,000.00), exclusive of costs, and every such fine is recoverable under the *Provincial Offences Act*, R.S.O. 1990, c.P33 as amended.

10. SHORT FORM TITLE:

This by-law shall be known as the “Noise Control By-law”.

11. EFFECTIVE DATE:

That this by-law shall come into force and effect upon approval of the set fines appended hereto, from the Ontario Court of Justice (Provincial Division).

12. REPEAL:

That By-law 97-54 is hereby repealed.

BY-LAW READ A FIRST, A SECOND AND THIRD TIME AND FINALLY PASSED THIS 21st, DAY OF DECEMBER, 2009.

THE CORPORATION OF THE TOWN OF MIDLAND

MAYOR

CLERK

Schedule "A" To By-law 2009-104

Item	Activity	Prohibition Period of time			
		Residential Area	Rural Area	Commercial Area	Industrial Area
1.	The detonation of fireworks or explosive devices not used in construction	At all times except for the celebrations of Victoria Day and Canada Day.	At all times except for the celebrations of Victoria Day and Canada Day.	At all times except for the celebrations of Victoria Day and Canada Day.	At all times except for the celebrations of Victoria Day and Canada Day.
2.	The discharge of firearms	At all times	At all times unless in compliance with by-law 94-74 as amended.	At all times	At all times
3.	The operation of a combustion engine which (i) is, or (ii) is used in, or (iii) is intended for use in a toy or a model or replica of any device which model or replica has no function other than amusement and which is not a conveyance	8:00pm to 8:00am	8:00pm to 8:00am	8:00pm to 8:00am	None
4.	The sound from or created by audio or visual device, public address system, sound equipment, loud speaker, or any musical or sound producing instrument of whatever kind when the same is played or operated in such manner or with such volume as to disturb the peace, quiet, comfort or repose of any individual in any office, dwelling house, apartment, hotel, hospital, or any other type of residence	At all times	At all times	At all times	None

Item	Activity	Prohibition period of time			
		Residential Area	Rural Area	Commercial Area	Industrial Area
5.	The operation of any 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 production, reproduction or amplification of any similar sounds by electronic means except when required or authorized by law or in accordance with good safety practices.	At all times	10:00pm to 8:00am	10:00pm to 8:00am	None
6.	The venting, release or pressure relief of air, steam or other gaseous material, product or compound from any autoclave, boiler pressure vessel, pipe, valve machine device or system.	9:00pm to 8:00am	None	None	None
7.	Persistent barking, calling, or whining or other similar persistent noise made by any domestic pet or any other animal kept or used for any purpose other than agriculture	At all times	At all times	At all times	At all times
8.	The operation of a commercial car wash (other than a car wash with air drying equipment)	8:00pm to 8:00am	None	None	None
9.	Yelling, shouting, hooting or other boisterous activity	At all times	At all times	None	None
10.	All selling or advertising by shouting or outcry or amplified sound.	8:00pm to 8:00am	8:00pm to 8:00am	None	None
11.	The operation of any item of construction equipment in a residential area, rural area or commercial area without effective muffling devices in good working order and in constant operation.	Friday 10:00pm to 8:00am Saturday. Saturday 8:00pm to 10:00am Sunday. Sunday 6:00pm to 7:00am Monday. Monday Monday through Friday 10:00pm to 7:00am.	Friday 10:00pm to 8:00am Saturday. Saturday 8:00pm to 10:00am Sunday. Sunday 6:00pm to 7:00am Monday. Monday Monday through Friday 10:00pm to 7:00am.	None	None

THE CORPORATION OF THE TOWN OF MIDLAND

PART 1 PROVINCIAL OFFENCES ACT

By-Law 2009-104 being a by-law to prohibit and regulate noise within the Town of Midland

Item	Column 1 Short Form Wording	Column 2 Provision Creating or Defining Offence	Column 3 Set Fine
1.	Causing or permitting sound from any motorized conveyance by racing	2 (a)	\$105.00
2.	Causing or permitting sound by the squealing of tires.	2(b)	\$105.00
3.	Causing or permitting sound from a combustion engine or pneumatic device without an effective exhaust or intake muffling device	2(c)	\$105.00
4.	Causing or permitting sound from a motor vehicle or a motor vehicle with a trailer improperly secured load, equipment or inadequate maintenance.	2(d)	\$105.00
5.	Causing or permitting sound from an engine or motor in or on any motor vehicle while stationary in a residential area for a period exceeding five minutes.	2(e)	\$105.00
6.	Causing or permitting sound from a motor vehicle horn or other warning device.	2(f)	\$105.00
7.	Causing or permitting sound from construction equipment without an effective muffling device in good working order and in constant operation.	2(g)	\$105.00
8	Causing or permitting sound likely to disturb the inhabitants.	2(h)	\$105.00
9.	Causing or permitting sound through the detonation of fireworks or explosive devices.	s. 3, Sch. A (1)	\$105.00
10.	Causing or permitting sound through the discharge of firearms.	s. 3, Sch. A (2)	\$105.00
11.	Causing or permitting sound from a combustion engine in use or intended for use in a toy or model.	s. 3, Sch. A (3)	\$105.00
12.	Causing or permitting sound from any electronic device or musical instrument.	s. 3, Sch. A (4)	\$105.00
13.	Causing or permitting sound from any auditory signaling device.	s. 3, Sch. A (5)	\$105.00
14.	Causing or permitting sound by the venting, releasing or pressure relief of air, steam or other material.	s. 3, Sch. A (6)	\$105.00
15.	Causing or permitting sound of a domestic pet or animal to bark, call or whine.	s. 3, Sch. A (7)	\$105.00
16.	Causing or permitting sound by operating a commercial car wash without air drying equipment.	s. 3, Sch. A (8)	\$105.00
17.	Causing or permitting sound by yelling, shouting or hooting or other boisterous activity.	s. 3, Sch. A (9)	\$105.00

Item	Column 1 Short Form Wording	Column 2 Provision Creating or Defining Offence	Column 3 Set fine
18.	Causing or permitting sound in selling or advertising by shouting or outcry or amplified sound.	s. 3, Sch. A (10)	\$105.00
19.	Causing or permitting sound by operating construction equipment without effective muffling devices in good working order and in constant operation.	s. 3, Sch. A (11)	\$105.00

Note: The penalty provision(s) for the offences indicated above is Section 9 of By-law 2009-104, a certified copy of which has been filed.