

# The Corporation of the City of Burlington

## BY-LAW NO. 19-2003

WHEREAS Council deems it appropriate to enact a by-law to prohibit and regulate certain public nuisances within the City of Burlington pursuant to section 128 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended;

AND WHEREAS Council deems it appropriate to enact a by-law to prohibit and regulate certain noises within the City of Burlington pursuant to section 129 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended;

NOW THEREFORE the Council of The Corporation of the City of Burlington enacts as follows:

### Title

1. This by-law may be cited as “The Nuisance and Noise Control By-law”.

### Technical Terms

2. In this by-law all words that are of technical nature and are related to sound and vibration shall have the meanings specified for them in Schedule 4 – Publications, Publication NPC-101, as amended.

### Definitions

3. In this by-law,
  - (1) “**Applicable Publication**” means a Publication referred to in the provisions of this by-law including a schedule hereto;
  - (2) “**Authorized Emergency Vehicle**” has the same meaning as in Traffic By-Law No. 1984-1;
  - (3) “**Certificate**” means a certificate of Competency in Environmental Acoustics Technology of a specified class issued by the Minister or other Agency;
  - (4) “**Chief Noise Control Officer**” means the Director of Building who is appointed by council for the purpose of administration and enforcement of this by-law;
  - (5) “**City**” means The Corporation of the City of Burlington;
  - (6) “**Constable**” means a police constable who is a member of the Halton Regional Police Service;
  - (7) “**Construction**” includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, moving, land clearing, earth moving, grading, excavating, filling, the laying of pipe and conduit whether above or below ground level, street and highway building, concreting, equipment installation and alteration and the structural installation of construction components and materials in any form

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- or for any purpose, and includes any work in connection therewith;
- (8) “**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;
  - (9) “**Construction Site**” means the area or portion of land used for construction or any other area used for any purpose related to the construction or for any related purpose;
  - (10) “**Conveyance**” includes a vehicle and any other device used to transport a person or persons or goods from place to place but does not include any vehicle or device operated only within the premises of a person;
  - (11) “**Council**” means the Council of The Corporation of the City of Burlington;
  - (12) “**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;
  - (13) “**Minister**” means the Minister of the Environment;
  - (14) “**Ministry**” means the Ministry of the Environment;
  - (15) “**Motor Vehicle**” includes an automobile, motor-cycle 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 vehicle running only upon rails, or a motorized snow vehicle, traction engine, farm tractor, self-propelled implement of husbandry or road building machine within the meaning of The Highway Traffic Act;
  - (16) “**Motorized Conveyance**” means a conveyance propelled or driven otherwise than muscular, gravitational or wind power;
  - (17) “**Municipal Law Enforcement Officer**” means any person who is appointed by Council as a Municipal Law Enforcement Officer for the City of Burlington;
  - (18) “**Municipality**” means the land within the geographic limit of The Corporation of the City of Burlington;
  - (19) “**Noise**” means unwanted sound;
  - (20) “**Noise Control Officer**” means any person who is a certificate holder appointed to assist the Chief Noise Control Officer;
  - (21) “**Nuisance**” means anything that is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
  - (22) “**Point of Reception**” means any point on a premises of a person where sound or vibration originating from other than those premises is received;
  - (23) “**Publication**” means a specified publication of the Noise Pollution Control Section of the Pollution Control Branch of the Ministry of the Environment named in Schedule 4

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- Publications, as amended. A copy of every Publication which is named in Schedule 4 – Publications is hereby made part of this by-law;
- (24) “**Residential Area**” means an area of the municipality where a residential use is permitted by any zoning by-law in force;
  - (25) “**Residential Renovations**” means construction that does not require any building permits and/or renovations constructed without any heavy equipment;
  - (26) “**Source**” or “**Source of Sound or Vibration**” means an activity, matter, thing, or tangible personal property or real property, from which sound or vibration is emitted;
  - (27) “**Stationary Source**” means a source of which does not normally move from place to place and includes the premises of a person as one stationary source unless the dominant source on the premises is construction or a conveyance.

### Nuisances

- 4. No person shall cause a nuisance within the City of Burlington without limiting the generality of the foregoing:
  - (1) No strong light or moving or twinkling lights shall be used so that an unusual quantity or type of light shines upon the land of others so as to be or to cause a nuisance to the public generally or to others residing or carrying on a manufacture, trade or business in the vicinity.
  - (2) No noise or vibrations shall be made, caused or created so as to be heard or felt or otherwise perceived outside the property and which are, in the view of all the circumstances including the nature of the neighbourhood and the use to which adjoining properties are put and the time of day during which such noise or vibrations are made, caused or created excessive or which are, or may cause a nuisance to the public generally or to others residing or carrying on a manufacture, trade or business in the vicinity.

### Prohibitions

- 5. No person shall emit or cause or permit the emission of sound resulting:
  - (1) from any act listed in Schedule 1 - General Prohibitions, and which sound is clearly audible at a point of reception;
  - (2) from any act listed in Schedule 2 - Time and Place Prohibitions, if clearly audible at a point of reception located in an area of the municipality specified within a prohibited time shown for such an area.

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### Limitations on Sound Emissions

6. No person shall emit or cause or permit the emission of any sound:
  - (1) from a stationary source such that the level of resultant sound at a point of reception exceeds the applicable sound level limit prescribed in Schedule 4 – Publications, Publication NPC-205;
  - (2) from any piece of construction equipment of a type referred to in Schedule 4 – Publications, Publication NPC-115, at a work site, any part of which is located within 600m of a residential area, unless:
    - a) the piece of construction equipment was put into use prior to January 1, 1979; or
    - b) the piece of construction equipment bears a label affixed by the manufacturer or distributor which states:
      - (i) the year of manufacture, and
      - (ii) that the item of equipment complies with the residential sound emission standards set out in Schedule 4 – Publications, Publication NPC-115, as applicable to that type of equipment and date of manufacture; or
    - c) the owner, operator, manufacturer or distributor provides proof that the item of equipment complies with the residential sound emission standard set out in Schedule 4 – Publications, Publication NPC-115, as applicable to that type of equipment and date of manufacture.
  - (3) from any air conditioning device of a type referred to in Schedule 4 – Publications, Publication NPC-216, unless:
    - a) the device was put into use prior to January 1, 1979; or
    - b) the device bears a label affixed by the manufacturer or distributor which states:
      - (i) the year of manufacture, and
      - (ii) that the device complies with the sound emission standard set out in Schedule 4 – Publications, Publication NPC-216, as applicable to that type of device and date of manufacture; or
    - c) the owner, operator, manufacturer or distributor provides proof that the device complies with the sound emission standard set out in Schedule 4 – Publications, Publication NPC-216, as applicable to that type of device and date of manufacture.
  - (4) from any domestic outdoor power tool of a type referred to in Schedule 4 – Publications, Publication NPC-117, which device is powered by an electric motor or an internal combustion engine unless:
    - a) the device was manufactured prior to January 1st, 1979; or
    - b) the device bears a label affixed by the manufacturer or distributor which states the year of manufacture and that the device when new complies with the sound emission standard set out in Schedule 4 – Publications, Publication NPC-117, as applicable to that type of device and date of manufacture; or
    - c) the owner, operator, manufacturer or distributor provides proof that the device when new complied with the sound emission standard set out in Schedule 4 –

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Publications, Publication NPC-117, as applicable to that type of device and date of manufacture.

- (5) from any motorized conveyance of a type referred to in Schedule 4 – Publications, Publication NPC-118, unless the motorized conveyance complies with the sound emission standard set out in Schedule 4 – Publications, Publication NPC-118, as applicable to that type of motorized conveyance and date of manufacture.
- (6) from a blasting operation of a type referred to in Schedule 4 – Publications, Publication NPC-119, unless the blasting operation complies with the sound emission standard set out in Schedule 4 – Publications, Publication NPC-119, as applicable to that type of blasting operation.
- (7) Clause 6 (1) does not apply to any equipment, apparatus, or device used in agriculture for food crop seeding, chemical spraying, or harvesting.

### **Preemption**

7. Where a source of sound is subject to more than one of the provisions (subsections 1 through 6) in Section 6, the less restrictive provision shall prevail.

### **Exemptions**

8. Notwithstanding any other provision of this by-law, this by-law shall not apply to a person who emits or causes or permits the emission of sound or vibration in connection with any activities, listed in Schedule 3 – Exemptions, or as approved by Council.
9. The Chief Noise Control Officer may identify and require specific terms and conditions necessary for approval for exemption and upon application by any person:
  - (1) exempt the applicant; or
  - (2) exempt the applicant for any exemption of lesser effect; or
  - (3) refuse to grant any exemption,

from any provision of this by-law with respect to any source of sound or vibration for the purposes of extending hours of construction, or of similar activities, whereby time constraints or other such constraints exist as such that Council approval could not be obtained prior to the undertaking of the activity.

10. All other applications for exemptions shall be required to obtain Council approval through a report prepared by the Chief Noise Control Officer.
11. Every application for exemption shall be made to the Chief Noise Control Officer in writing and shall contain:
  - (1) the name and address of the applicant;
  - (2) a description of the source of sound or vibration in respect of which exemption is sought;

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- (3) a statement of the particular provision or provisions of the by-law from which exemption is sought;
  - (4) the period of time, of a duration not in excess of six months, for which the exemption is sought;
  - (5) the reasons why the exemption should be granted;
  - (6) a statement of the steps, if any, planned or presently being taken to bring about compliance with the by-law.
12. The Chief Noise Control Officer may require an applicant to provide such further and other information as may be necessary to consider an application.
  13. No application shall be deemed complete until all required information has been provided by the applicant.
  14. Where an application is not approved or approved upon terms and conditions or approval to a lesser extent than the exemption applied for, the Chief Noise Control Officer shall set out reasons therefore and shall serve a copy of the decision upon the applicant. The Chief Noise Control Officer may reconsider the application if additional information or documentation, required by the Chief Noise Control Officer, is submitted by the applicant.
  15. 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;
    - (1) for the immediate health, safety or welfare of the inhabitants or any of them, or
    - (2) for the preservation or restoration of property,

unless such sound or vibration is clearly of a longer duration or of a nature more disturbing than is reasonably necessary for the accomplishment of such emergency purpose.

### **Severability**

16. Where a court of competent jurisdiction declares any provision of this by-law invalid, the provision shall be deemed conclusively to be severable from the by-law.
17. No part of this by-law not declared by a court of competent jurisdiction to be invalid shall be affected by the provision severable from the by-law.

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**Enforcement**

18. The Chief Noise Control Officer shall administer and enforce this by-law.
19. Such noise control officer(s), municipal law enforcement officer(s), or constable(s), as are necessary for the purpose of enforcement of this by-law who possess a certificate shall enforce all portions of this by-law.
20. Such municipal law enforcement officer(s) or constable(s), as are necessary for the purpose of enforcement of this by-law who do not possess a certificate shall only enforce the portions of this by-law where sound level measurements are not required.

**Penalty**

21. Any person who contravenes any provision of this by-law is guilty of an offence and is liable upon conviction to a fine in accordance with the Provincial Offences Act.

**Enactment**

22. That By-laws 82-1991, 135-1981 and By-law 2840 as amended, be repealed.
23. This by-law comes into effect:

ENACTED AND PASSED this 24<sup>th</sup> day of February, 2003

\_\_\_\_\_ MAYOR  
Robert S. MacIsaac

\_\_\_\_\_ CLERK  
Kim Phillips

## **Schedule 1 - General Prohibitions**

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 an effective exhaust muffling device in good working order and in constant operation.
4. The operation of a vehicle, or a vehicle with a trailer, resulting in banging, clanking, grinding, rattling, 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, unless:
  - (1) the vehicle is in an enclosed structure constructed so as to effectively prevent excessive noise emission.
  - (2) 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.
  - (3) 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 or refuse compactors and heat exchange systems.
  - (4) 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 preservation of perishable cargo.
  - (5) prevailing low temperatures make longer idling periods necessary, immediately after starting the motor or engine.
  - (6) the idling is for the purpose of cleaning and flushing the radiator and associated circulation system for seasonal change or antifreeze, 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 in accordance with good safety practices.
7. The operation of any item of construction equipment without effective muffling devices in good working order and in constant operation.



## Schedule 2 – Time and Place Prohibitions

1.	The operation of a combustion engine which is, is used in, or is intended for use in a toy or a model or replica of a larger device, which model or replica has no function other than amusement and which is not a conveyance.	9:00 pm – 7:00 am* * (9:00 am Sundays)
2.	The operation of any auditory signalling 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 law or in accordance with good safety practices.	7:00 pm – 7:00 am
3.	The operation of any electronic device or group of connected electronic devices, incorporating one or more loudspeakers or other electro-mechanical transducers, and intended for the production, reproduction, or amplification of sound.	11:00 pm – 7:00 am* * (9:00 am Sundays)
4.	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.	11:00 pm – 7:00 am
5.	The operation of any powered rail car including but not limited to refrigeration cars, locomotives or self-propelled passenger cars, while stationary on property not owned or controlled by a railway governed under the Railway Safety Act.	7:00 pm – 7:00 am
6.	The operation of any motorized conveyance other than on a highway or other place intended for its operation.	At any time
7.	The operation of commercial car wash with air drying equipment.	11:00 pm – 7:00 am
8.	The operation of any construction equipment in connection with construction.	9:00 pm – 7:00 am* * (12:00 noon Sundays)
9.	Loading, unloading, delivering, packing, unpacking, or otherwise handling any containers, produce, materials, or refuse whatsoever, unless necessary for the maintenance of essential services.	11:00 pm – 7:00 am
10.	The operation of solid waste, refuse, or recyclable bulk lift or refuse compacting equipment.	9:00 pm – 7:00 am
11.	Persistent barking, calling, whining or other similar persistent noise making by any domestic pet or any other animal kept or used for any purpose other than agriculture.	At any time
12.	Persistent yelling, shouting, screaming, hooting, whistling, or singing.	At any time
13.	All selling or advertising by shouting out-cry or amplified sound.	At any time
14.	The detonation of fireworks or explosive devices except as permitted in Business Licence By-law 102-2002.	At any time
15.	The discharge of firearms contrary to Firearms By-law 83-1991.	At any time
16.	The operation of any powered or non-powered tool for domestic purposes, other than snow removal.	9:00 pm – 7:00 am* * (9:00 am Sundays)
17.	The operation of a power assisted hang glider or parafoil.	7:00 pm – 7:00 am
18.	The operation of any item of snow making equipment.	7:00 pm – 7:00 am
19.	The operation of a sound emitting pest control device.	7:00 pm – 7:00 am

**NOTE:** For the purpose of Schedule 2, “motorized conveyance” includes: snowmobiles,

mopeds, go-carts, track bikes, and trail bikes.

### **Schedule 3 - Exemptions**

1. Operation of authorized emergency vehicles.
2. Operation of bells, utilized as traffic control devices including the following:
  - (1) bells at traffic signal locations;
  - (2) bells at railway crossings.
3. Operation of equipment and machinery by or on behalf of the City carrying on or engaged in the performance of public works for emergency purposes, including, but not limited to:
  - (1) winter snow clearing and removal equipment;
  - (2) turfgrass maintenance and repair equipment;
  - (3) traffic line painting machines;
  - (4) catchbasin cleaners;
  - (5) tree and shrub pruning and mulching equipment;
  - (6) sidewalk grinding and repair equipment;
  - (7) street cleaners and flushers.

### **Schedule 4 – Publications**

- |     |                     |                                      |
|-----|---------------------|--------------------------------------|
| 1.  | Publication NPC-101 | Technical Definitions                |
| 2.  | Publication NPC-102 | Instrumentation                      |
| 3.  | Publication NPC-103 | Procedures                           |
| 4.  | Publication NPC-104 | Sound Level Adjustments              |
| 5.  | Publication NPC-205 | Stationary Sources (Urban)           |
| 6.  | Publication NPC-232 | Stationary Sources (Rural)           |
| 7.  | Publication NPC-206 | Sound Levels due to Road Traffic     |
| 8.  | Publication NPC-115 | Construction Equipment               |
| 9.  | Publication NPC-216 | Residential Air Conditioning Devices |
| 10. | Publication NPC-117 | Domestic Outdoor Power Tools         |
| 11. | Publication NPC-118 | Motorized Conveyances                |
| 12. | Publication NPC-119 | Blasting                             |