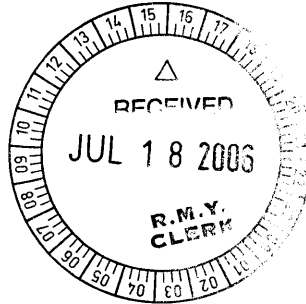


Carrier Safety and Enforcement Branch
301 St. Paul Street, 3rd Floor
St. Catharines, Ontario
L2R 7R4

July 13, 2006

Mr. Denis Kelly
Regional Clerk
Regional Municipality of York
17250 Yonge Street
Newmarket, Ontario
L3Y 6Z1



REGION OF YORK
CLERK'S OFFICE

FILE No. - *fol*

Dear Mr. Kelly:

Thank you for your letter and accompanying recommendations regarding excessive noise from commercial motor vehicles. On behalf of the Honourable Donna Cansfield, Minister of Transportation, I welcome the opportunity to respond. The ministry is sympathetic to all concerns about excessive noise from motor vehicles and has responded to similar concerns raised in other municipalities by encouraging the local governments to take the appropriate action.

Our legal counsel advise that Section 129 of the Municipal Act currently permits the passage of noise bylaws and that the City of Windsor has enacted specific prohibitions regarding the use of engine brakes (enclosed). You may wish to confer with the City of Windsor regarding their experience in this regard.

Should you wish to confer with our legal counsel the appropriate person to contact is Mr. Ross Burns, Senior Counsel, who may be reached at:

Ministry of Transportation
Legal Service Branch
1st Floor, Building B
1201 Wilson Avenue
Downsview, Ontario M3M 1J8
Phone: 416-235-4412 Fax: 416-235-4924

Thank you for the opportunity to respond to your concerns.

Yours truly,



Peter Hurst
Director

Enclosure

c: Honourable Donna Cansfield, Minister of Transportation

AMENDED BY:
By-law 8952, dated April 21, 1987 (approved by Minister of Environment Aug. 24/87)
By-law 10277, dated May 22, 1990
By-law 11621, dated Nov. 1, 1993 (approved by Minister of Environment June 16/94)
By-law 178-1998, June 8, 1998 (approved by Minister of Environment July 30/98)
By-law 191-1998, June 15, 1998 (approved by Minister of Environment July 30/98)
By-law 272-1998, August 31, 1998 (approved by Minister of Environment Jan. 26/99)
By-law 113-1999, April 26, 1999 (approved by Minister of Environment May 28, 1999)
By-law 344-1999, Nov. 15, 1999 (approved by Minister of Environment Feb. 2, 2000)
By-law No. 445-2001, December 3, 2001 (approval not needed – per George Wilkki legal opinion att'd)
By-law No. 182-2004, June 14, 2004 (new Municipal Act – Minister approval no longer necessary)

B I L L
No. 279
1980

BY - L A W N U M B E R 6716

A BY-LAW RESPECTING THE EMISSION OF
SOUNDS

Passed the 22nd day of September, 1980.

WHEREAS Section 129 of the Municipal Act, 2001, as amended, provides that the councils of local municipalities may pass by-laws for regulating or prohibiting with respect to noise; (**amended By-law 182, 2004, June 14, 2004**)

AND WHEREAS it is deemed expedient to reduce and control such sound or vibration;

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

1. **INTERPRETATION**

- (1) In this by-law,
 - (a) "**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 alteration and the structural installation of construction components and materials in any form or for any purpose, and includes any work in connection therewith;
 - (b) "**Construction Equipment**" means any equipment or device designed and intended for use in construction or material handling, including but not limited to, air 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;
 - (c) "**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;
 - (d) "**Corporation**" means The Corporation of the City of Windsor;
 - (e) "**Council**" means the Council of The Corporation of the City of Windsor;

- (f) "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" means Minister of the Environment;
- (h) "Ministry" means Ministry of the Environment;
- (i) "Motor Vehicle" 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 machine, traction engine, farm tractor, self-propelled implement of husbandry or road-building machine within the meaning of the Highway Traffic Act;
- (j) "Motorized Conveyance" means a conveyance propelled or driven otherwise than by muscular, gravitational or wind power;
- (k) "Municipality" means the land within the geographic limit of the City of Windsor;
- (l) "Noise" means unwanted sound;
- (m) "Noise Control Officer" means a Police Officer of the City of Windsor or any person designated by Council as responsible for the administration of this by-law from time to time;
- (n) "Point of Reception" means any point on the premises of a person where sound or vibration originating from other than those premises is received.

(2) Zones

In this by-law,

- (a) "Residential Area" means those areas of the Municipality designated as residential in By-law Number 8600 and designated as residential and planned development in By-law Number 3072 of the Corporation as may be amended from time to time. **(B/L 8952, eff. Aug. 24/87)**
- (b) "Commercial Area" means those areas of the municipality designated as commercial in By-law Numbers 8600 and 3072 of the Corporation as may be amended from time to time. **(B/L 8952, eff. Aug. 24/87)**

2. GENERAL PROHIBITIONS

No person within the boundary of the municipality shall emit or cause or permit the emission of sound resulting from an act listed herein, and which sound is clearly audible at a 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 an effective exhaust or intake 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, 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,
 - (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 antifreeze, cleaning of the fuel system, carburettor 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 or in accordance with good safety practices;
- (7) The operation of any item of construction equipment in a residential area without effective muffling devices in good working order and in constant operation.
- (8) *Dynamic braking or engine braking or engine retarding of a motor vehicle.* **(added By-law 182-2004, June 14, 2004)**

2.1 AREA PROHIBITION

No person shall idle, or permit the idling of, a bus, for a continuous period exceeding 15 minutes, if the idling sound of the bus is clearly audible at a point of reception within the boundaries of the City Centre Business Improvement Area, as described in Schedule "A" attached hereto. (added B/L 178-1998, June 8/98, eff. July 30/98)

3. PROHIBITIONS BY TIME AND PLACE

No person within the municipality shall emit or cause or permit the emission of sound resulting from any act listed in Table 3.1, hereinafter set out, 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.

TABLE 3-1

	PROHIBITED PERIOD OF TIME	
	Commercial Area	Residential Area
1. 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.	Midnight to 7:00 A.M.	At all times
2. The sound from or created by any radio, phonograph, tape player, television, 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 (B/L 11621, eff. June 16/94)	At all times	At all times
3. 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 electronic means, except where required or authorized by law or in accordance with good safety practices.	Midnight to 7:00 A.M.	At all times
4. 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 by the Canada Railway Act.	Midnight to 7:00 A.M.	At all times
5. The operation of any motorized conveyance other than on a highway or other place intended for its operation	Midnight to 7:00 A.M.	At all times
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.	Midnight to 7:00 A.M.	9:00 P.M. to 8:00 A.M.
7. The operation of a commercial car wash with air drying equipment	Midnight to 7:00 A.M.	11:00 P.M. to 8:00 A.M.
8. Yelling, shouting, hooting, whistling or singing.	Midnight to 7:00 A.M.	At all times

9.	The operation of a power assisted hang glider or parafoil	Midnight to 7:00 A.M.	At all times
10.	The operation of any item of snow making equipment.	Midnight to 7:00 A.M.	At all times
11.	All selling or advertising by shouting or outcry of amplified sound.	Midnight to 7:00 A.M.	At all times
12.	Loading, unloading, delivering, packing, unpacking, or otherwise handling any containers, products, materials, or refuse, whatsoever, unless necessary for the maintenance of essential services or the moving of private household effects.		8:00 P.M. to 6:00 A.M.
13.	The operation of any equipment in connection with construction.		8:00 P.M. to 6:00 A.M.
14.	The operation or use of any tool for domestic purposes other than snow removal	Midnight to 7:00 A.M.	9:00 P.M. to 8:00 A.M.
15.	The operation of solid waste bulk lift or refuse compacting equipment.		8:00 P.M. to 6:00 A.M.
16.	The operation of a commercial car wash of a type other than mentioned in Item 7.	Midnight to 7:00 A.M.	11:00 P.M. to 8:00 A.M.
17.	Persistent barking, calling or whining or other similar persistent noise making by any domestic pet or any other animal kept or used for any purpose other than agricultural. (added B/L 113-1999, Apr.26/99, eff. May 28/99)	At all times	At all times

3.1 EXEMPTION (added B/L 445-2001, Dec.3/2001)

Table 3-1, paragraph 17, of section 3 shall not apply to:

- (a) A veterinary hospital, clinic, office or veterinary service lawfully operated and supervised by a veterinarian licensed to practice in Ontario;
- (b) An animal shelter operated by the Windsor-Essex County Humane Society, Erie Wildlife Rescue Inc., or a shelter lawfully operated by the Ontario Humane Society;
- (c) Premises registered as a research facility in accordance with the *Animals For Research Act*, as amended;
- (d) Kennels licensed by The Corporation of the City of Windsor;
- (e) Pet shops licensed by The Corporation of the City of Windsor;
- (f) Any person in charge of a traveling circus, exhibition, or road show, or any employee thereof, lawfully displaying animals within the City of Windsor;
- (g) Any person licensed or exempted as an operator of an animal supply facility in accordance with the *Animals For Research Act*, as amended, or the employees of such facility, during the course of their duties;
- (h) Any person who operates an elementary school, secondary school, college, university or provincial institution that contains a research facility exempted from registration under the *Animals For Research Act*, as amended;
- (i) Any person who operates, or who is employed by, an establishment which lawfully carries on the business of supplying animals to elementary schools, secondary schools, colleges, universities or provincial institutions;
- (j) Dogs maintained in a zoo, fair, exhibition, carnival, menagerie or circus operated or licensed by The Corporation of the City of Windsor or other governmental agency;
- (k) The Corporation of the City of Windsor or other governmental authority while lawfully operating a public park, exhibit, or zoological garden, and maintaining animals therein; and
- (l) Any dog owned, possessed or harboured by the Windsor Police Service, Ontario Provincial Police, Royal Canadian Mounted Police or any other local police or other government enforcement agency.”

4. **EXCEPTION**

Notwithstanding any other provision of this by-law, it shall be lawful to emit or cause or permit the emission of sound or vibration in connection with:

- (1) Emergency measures undertaken,
 - (a) for the immediate health, safety or welfare or the inhabitants or any of them; or,
 - (b) 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.

5. **GRANT OF EXCEPTION 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, not in excess of six (6) months, 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 give the applicant and any person opposed to the application, an opportunity to be heard and 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.

6. **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 hereinafter listed traditional, festive, religious and other activities, namely:

- (a) International Freedom Festival;
- (b) Emancipation Day;
- (c) Firemen's Field Day;
- (d) Carrousel of the Nations;
- (e) Ringing of church bells or chimes. **(amended B/L 11621, eff. June 16/94)**
- (f) Festival Epicure **(added B/L 191-1998, June 15/98, eff. July 30/98)**
- (f) Challenge Cup, provided however that same is held on the grounds of the St. Clair College of Applied Arts and Technology, 2000 Talbot Road West **(added B/L 272-1998, eff. Jan. 26/99)**

7. **SEVERABILITY**

If a Court of competent jurisdiction should declare any section or part of a 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.

8. **PENALTY**

Every 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), exclusive of costs and every such fine is recoverable under the Provincial Offences Act. **(amended B/L 10277, May 22/90; B/L 344-1999, Nov.15/99)**

9. That By-law Number 137, as amended, is repealed.

10. This by-law shall come into full force and take effect upon the day following the final passing thereof upon which it is approved by the Minister of the Environment.

(SIGNED) "A. H. WEEKS"

MAYOR

(SIGNED) "J. B. ADAMAC"

CLERK

First Reading - September 22, 1980
Second Reading - September 22, 1980
Third Reading - September 22, 1980

NOTE: By-law No. 6716 is approved pursuant to the provisions of The Environmental Protection Act, 1971, as amended, at Toronto, this 17th day of February, 1981. (original certificate attached to book copy of By-law 6716)

(SIGNED) "HARRY PARROTT"
MINISTER OF THE ENVIRONMENT

(added B/L 178-1998, June 8/98, eff, July 30/98)

SCHEDULE "A"
TO BY-LAW NUMBER 178-1998

The Downtown Area of the City of Windsor bounded,

- a) on the north, by the Detroit River;
- b) on the east, by a line down the middle of Glengarry Avenue from the Detroit River to the middle of Chatham Street; thence westerly along the middle of Chatham Street to the middle of McDougall Street; thence southerly along the middle of McDougall Street to the middle of Tuscarora Street; thence westerly along the middle of Tuscarora Street to the middle of Windsor Avenue; thence southerly along the middle of Windsor Avenue to the middle of Elliott Street;
- c) on the south, by a line down the middle of Elliott Street from the middle of Windsor Avenue westerly to Victoria Avenue; thence northerly along the middle of Victoria Avenue to the middle of Elliott Street; thence westerly along the middle of Elliott Street to the alley between Victoria Avenue and Dougall Avenue; and
- d) on the west, by a line down the middle of the alley between Victoria Avenue and Dougall Avenue from Elliott Street to the middle of Park Street; thence westerly along the middle of Park Street to the middle of Church Street; thence northerly along the middle of Church Street to the middle of Pitt Street; thence westerly along the middle of Pitt Street to the middle of Bruce Avenue; thence northerly along the middle of Bruce Avenue to the Detroit River.

Re: amending BL 445-2001

I am of the opinion that we do not need Ministerial approval for the amendment of the noise bylaw to delete police dogs from its purview.

Should we be increasing the effect of the bylaw we would need approval. Reducing its effect is in my opinion different. As another example of this, for every event we hold where breach of the noise bylaw is a concern, we pass a temporary waiver of the noise bylaw. These waivers are not submitted to the Ministry for approval before taking effect.

In my opinion, the bylaw is valid as is and can be acted upon immediately.

George A. Wilkki
Director of Legal Services