

THE CORPORATION OF THE MUNICIPALITY OF CENTRAL ELGIN

BY-LAW NO. 2259

Being a by-law to amend By-Law No. 212, as amended, as a by-law to control noise in the Municipality of Central Elgin

WHEREAS section 9 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, (the 'Act') provides that a municipality has the capacity, rights, powers, and privileges of a natural person for the purpose of exercising its authority under this or any other statute;

AND WHEREAS subsection 11 (1) of the said Act provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 11 (2) of the said Act provides that a municipality may pass by-laws respecting, among the things, economic, social, and environmental well-being of the municipality (paragraph 5), services and things that the municipality is authorized to provide under the said subsection (1) (paragraph 7), and protection of persons and property (paragraph 8);

AND WHEREAS section 128 of the said Act provides that a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances;

AND WHEREAS section 129 of the said Act provides that, without limiting sections 9 and 11 of the Act, a municipality may, (a) prohibit and regulate with respect to, among other things, noise; and, (b) prohibit the matters described in the said clause (a) unless a permit is obtained from the municipality for such matters and, further thereto, may impose conditions for obtaining, continuing to hold, and renewing the said permit, including requiring the submission of plans;

AND WHEREAS by By-Law No. 212, as amended, originally enacted on June 19, 2000, Council for the Municipality of Central Elgin created regulations, including prohibitions, to control noise within the territorial limits of the said Municipality of Central Elgin, including prohibitions by time and place for sound created by specified activities;

AND WHEREAS enforcement of specific prohibitions under By-Law No. 212, as amended, in relation to sound created and/or heard as between existing commercial and residential zones in the Community of Port Stanley within the territorial limits of the Municipality of Central Elgin has led to recognition of the need to revise those specific prohibitions to more fairly accommodate uses within those zones;

NOW THEREFORE, the Council of The Corporation of the Municipality of Central Elgin enacts as follows:

1. APPLICATION OF AMENDING BY-LAW

The provisions of this amending by-law, including but not limited to the processes created hereunder, shall apply only to:

- 1.1 lands within the Community of Port Stanley and Municipality of Central Elgin as outlined on the sketch attached as Schedule "A" hereto;
- 1.2 lands and premises upon and/or within which is operated as a Restaurant as defined in Central Elgin Zoning By-Law 1507 (formerly By-Law 1507 for the Village of Port Stanley), as amended; and,

- 1.3 sound created by the activities specified in items 4 (the operation of any electronic devices incorporating one or more loudspeakers or other electromechanical transducers and intended for the production, reproduction, or amplification of sound) and 12 (yelling, shouting, hooting, whistling, or singing) as identified in Table 3 - 1 (Prohibitions by Time and Place).

2. AMENDMENT OF CENTRAL ELGIN BY-LAW NO. 212, AS AMENDED

Central Elgin By-Law No. 212, as amended, shall be as follows:

- 2.1 Section 1 shall be amended by adding the following definitions:

(n) Person

“person” means and includes an individual, an association, a firm, a Partnership, and/or a corporation.

(o) Owner or Owners

“owner” or “owners” means the person or persons, as the case may be, whose interest in lands and/or premises is defined and whose name is specified in an instrument in the applicable Registry or Land Titles office, or who can otherwise provide other satisfactory evidence of ownership, but, for purposes of this by-law is deemed to include any lessee or occupant of such lands and/or premises.

- 2.2 Section 3A shall be added as follows:

3A Extended Sound Permit – Community of Port Stanley

- 3A.1 The provisions of this section applies to:

- 3A.1.1 lands within the Community of Port Stanley and Municipality of Central Elgin as outlined on the sketch attached as Schedule “A” hereto;

- 3A.1.2 lands and premises upon and/or within which is operated a Restaurant as defined in Central Elgin Zoning By-Law No. 1507 (formerly By-Law No. 1507 for the Village of Port Stanley), as amended; and,

- 3A.1.3 sound created by the activity specified in items 4 (the operation of any electronic devices incorporating one or more loudspeakers or other electromechanical transducers and intended for the production, reproduction, or amplification of sound) and 12 (yelling, shouting, hooting, whistling, or singing) as identified in Table 3-1 (Prohibitions by Time and Place).

- 3A.2 Notwithstanding the Prohibition set forth in section 3 and Table 3-1, items 4 and 12 inclusive, the owner or owners of any lands and premises satisfying the qualification set forth in subsection 3A.1 above, or the authorized agent of such owner or owners, may submit an Application for an Extended Sound Permit (hereinafter “Permit”).

- 3A.3 The Application provided for in subsection 3A.2 above shall be made in writing to the Municipality of Central Elgin and shall contain at least all of the following information and/or supporting materials:

- 3A.3.1 the name and address of the Applicant or authorized agent;

- 3A.3.2 the address of the lands and premises for which a Permit is requested;

- 3A.3.3 a detailed description of the sound creation activity for which a Permit is being requested, limited to only one or both of the items identified in subsection 3A.1.3 above;
- 3A.3.4 the period of time (not to exceed six (6) months), days of week, and hours of day (not to extend after 11:59 PM) for which a Permit is requested;
- 3A.3.5 a statement of the reasons why a Permit is required and should be granted;
- 3A.3.6 a statement by the Applicant and any other owner or owners of the lands and premises that he, she, or it will implement and comply with the Sound Management Plan submitted pursuant to subsection 3A.3.7 above;
- 3A.3.7 a statement that, in addition to the fees set forth in subsections 3A.3.10 and 3A.3.11 below, the Applicant shall reimburse the Municipality of Central Elgin for all costs incurred in the review of the Application for Permit contemplated herein, including but not limited to legal and engineering expense;
- 3A.3.8 a non-refundable Application for Permit fee in the amount of \$150.00; and,
- 3A.3.9 an Extended Permit Fee of \$300.00, refundable only if the Application is not approved by the Noise Control Officer or Municipal Council within the process described below.
- 3A.4 The Application for Permit shall be submitted to the Municipality of Central Elgin and shall be delivered to the Noise Control Officer for review, including, if deemed appropriate by such Officer, assistance of and input from either any other member of municipal staff or any qualified consultant, including but not limited to legal or engineering consultant.

The Noise Control Officer, with or without assistance, shall review the Application and supporting materials for completeness and, as a preliminary exercise of his or her unfettered discretion, determine if preparation and submission of a report of a qualified acoustic engineer and/or Sound Management Plan is required for consideration of the Application by Council.

In the event that the Noise Control Officer determines that a report of an acoustic engineer and/or Sound Management Plan is required, he or she shall communicate such requirement in writing to the Applicant and the Applicant shall arrange for and deliver such further materials to the Noise Control Officer for consideration within the report to Council referenced below, failing which the Application shall be deemed incomplete and return to the Applicant without consideration by Council. In the event that the Noise Control Officer determines that a report from an acoustic engineer and/or Sound Management Plan is not required and the Application is otherwise found to be complete, the Noise Control Officer shall thereafter report to Council, as soon as possible, within such report the Officer, among the things, shall state both his opinion as to the merits of the Application for Permit and his recommendation as to whether a Permit should be granted or refused and, if granted, any proposed terms and conditions to be imposed thereon. Council shall not consider the Application for Permit until it has reviewed the report of the Noise Control Officer.

For purposes of this section,

- (a) "report from a qualified acoustic engineer" means a report identifying and detailing any and all noise issues relating to and arising from the granting of a Permit as requested by the Applicant and contemplated by this by-law; and,
- (b) "Sound Management Plan" means a document prepared by a qualified acoustic engineer detailing, among other things, the methods and measures by which the noise issues relating to an arising from the Permit being requested by

the Applicant shall be addressed and which Plan shall include the following information and/or supporting materials:

- (i) sketch detailing the lands and premises, including floor plan;
- (ii) location and direction of sound sources;
- (iii) description of sound mitigation methods and measured; and,
- (iv) proposed noise complaint protocols.

- 3A.5 Prior to consideration of the Application for Permit by Council, the Noise Control Officer shall forward a copy of his report as referred to in subsection 3A.4 above to the Applicant at the address shown on the Application by prepaid registered mail and shall, not sooner than two (2) weeks after the mailing of such report to the Applicant, submit the report to Council and shall, on request, make such report available to the public for inspection.
- 3A.6 Council shall decide to grant or refuse the Permit and, if to be granted, shall further decide the terms and conditions to be imposed thereon. In making that decision, Council shall consider the Application for Permit and materials submitted in support thereof, the report of the Noise Control Officer, any written submission made by the Applicant following delivery of the report of the Noise Control Officer, and any other representations, submissions, or other materials, whether in writing or oral, as it sees fit.
- 3A.7 The terms and conditions recommended by the Noise Control Officer and/or imposed upon the Permit granted by Council,
- 3A.7.1 shall specify,
- (a) the period of time that the Permit shall be in effect, which period of time shall not exceed six (6) months from the date of issuance, subject to renewal;
 - (b) the date upon which the Permit shall expire, subject to renewal; and,
 - (c) the activity to which the Permit shall apply and the days of the week and times of day until which any sound created by such activity shall be permitted to be heard in the zones identified in section 3 and Table 3 -1; and, further thereto,
- 3A.7.2 may include any other reasonable terms and conditions, including but not limited to,
- (a) implementation and maintenance of any sound mitigation methods and measures;
 - (b) restriction as to the type and extent of equipment from which sound allowed under the Permit can be produced;
 - (c) expressed in decibels the volume of sound allowed under the Permit and to be heard at any specific point of reception;
 - (d) restriction as to the number of persons permitted on the lands and/or in the premises during the extended time or times to which the Permit applies;
 - (e) a plan to monitor volume of sound allowed under the Permit by a qualified acoustic engineer, including but not limited to sound to be heard at a specified point of reception; and,
 - (f) posting of security relating to compliance with the Permit and any terms and conditions imposed thereon.
- 3A.8 The decision of Council with respect to the Application for Permit shall be final.
- 3A.9 At least thirty (30) days prior to expiry of the Permit, the person to whom the Permit is issued, or any authorized agent thereof, may apply for renewal of the said Permit and the process set forth in subsections 3A.2 through 3A.8, with necessary modifications and specifically excluding the requirement for payment of an Extended Permit Fee as set forth in section 3A.3.11, shall apply to such Application for Renewal of Permit.

3A.10 The person to whom a Permit is granted, including any owner or owners of the lands and premises to which the Permit applies, and further specifically including the operator of any business enterprise thereon or therein, shall comply with all provisions of the Permit, or renewal thereof, and all terms and conditions imposed thereon.

3A.11 Any breach or violation of either the provisions of the Permit, or any renewal thereof, or any term and/or condition imposed thereon shall forthwith invalidate such Permit, including any renewal thereof, and, further thereto, such Permit, including any renewal thereof, shall forthwith become null and void.

2.3 Section 8, including the heading thereof, shall be deleted and replaced by the following section, including heading:

8. Administration, Enforcement, and Penalty

8.1 This by-law shall be administered by the Noise Control Officer.

8.2 The Noise Control Officer or any other person or officer, including police officer, duly authorized to enforce this by-law may enter upon any lands or, if otherwise permitted at law, any premises at any reasonable time for the purpose of carrying out an inspection pursuant to the Act and for the purpose of determining compliance with this by-law, including but limited to compliance with the provisions of any Permit, including renewal thereof, or terms and conditions imposed thereon.

8.3 Without limiting any rights or powers of enforcement by any other person or officer, including police officer, as provided for in the Act, the Noise Control Officer may enforce the provisions of this by-law.

8.4 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this by-law, including performance of an inspection.

8.5 Any person who contravenes any provisions of this by-law, including but not limited to any contravention of any Permit, or renewal thereof, as issued hereunder and as further including any terms and/or conditions imposed upon such Permit, is guilty of an offence.

8.6 A director or officer of a corporation who knowingly concurs in the contravention of this by-law is guilty of an offence.

8.7 With the exception of an offence for contravention upon lands and/or premises to which section 3A applies according to the requirements identified in section 3A.1, including but not limited to an offence for contravention of a Permit, or renewal thereof, or any terms and/or conditions imposed thereon as provided for in section 3A.7.1 above, any person convicted of an offence hereunder is liable to a fine as provided for in the Provincial Offences Act, R.S.O 1990, c. P. 33, as amended, or any successor statute thereto.

8.8 Any person convicted of an offence for a contravention upon lands and/or premises to which section 3A applies according to the requirements identified in section 3A.1, including but not limited to an offence for contravention of a Permit, or renewal thereof, or any terms and/or conditions imposed thereon as provided for in section 3A.7.1, is liable,

(a) upon a first conviction, to a minimum fine of \$500.00 and a maximum fine of \$5000.00; and,

(b) upon a subsequent conviction, to a minimum fine of \$1,000.00 and a maximum fine of \$10,000.00.

8.9 Notwithstanding that set forth in subsection 8.7 above, where the person so convicted of an offence for contravention of a Permit, or renewal thereof, or any terms and/or conditions imposed thereon as provided for in Subsection 3A above is a corporation, the corporation is liable,

(a) upon a first conviction, to a minimum fine of \$1,000.00 and a maximum fine of \$10,000.00; and,

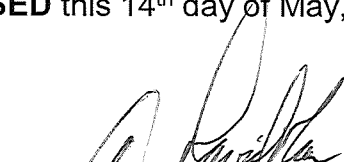
(b) upon a subsequent conviction, to a minimum fine of \$2,500.00 and a maximum fine of \$25,000.00.

8.10 If this by-law is contravened and a conviction entered in respect thereof, in addition to any other remedy and to any other penalty otherwise imposed, the Court in which the said conviction has been entered or any other Court of competent jurisdiction may thereafter make an order prohibiting the continuation or repetition of the offence by the person so convicted.

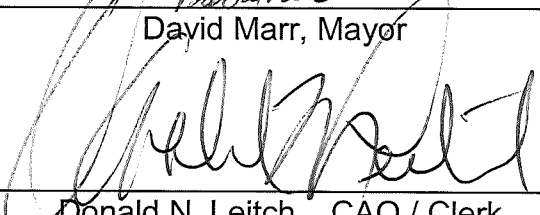
2.4 Table 3 - 1 shall be amended by deletion of items 4 and 12 thereof and such items shall be replaced and substituted for by the items set forth in Schedule "B" attached hereto.

READ A FIRST AND SECOND TIME this 14th day of May, 2018.

READ A THIRD TIME AND FINALLY PASSED this 14th day of May, 2018



David Marr, Mayor



Donald N. Leitch, CAO / Clerk

SCHEDULE "B"

PROHIBITIONS BY TIME AND PLACE

Table 3-1

PROHIBITED PERIOD OF TIME

	Quiet Zone	Residential Area	Open Space	Business
4. The operation of any electronic device or group of connected electronic devices incorporating one or more loudspeakers or other electromechanical transducers and intended for the production, reproduction or amplification of sound.	At all times	7p.m. – 7a.m. (Subject to Extended Sound Permit)	7p.m. – 7a.m.	Midnight – 9a.m.
12. Yelling, shouting, hooting, whistling or singing	At all times	11p.m. – 7a.m. (Subject to Extended Sound Permit)	11p.m. – 7a.m.	11p.m. – 7a.m.