

Municipality Of Chatham-Kent
Infrastructure and Engineering Services
Public Works
Information Report

To: Mayor and Members of Council
From: Pat Bruette, Acting Director of Public Works
Date: September 6, 2018
Subject: Amendment to Noise By-Law - No Engine Braking

This report is for Council's information.

Background

A report was presented to Council on March 21, 2016 recommending to remove the existing "No Engine Braking" signs as there was no legislation to support their placement or enforcement. A motion was passed in Council on March 21, 2016 to create a by-law to enforce engine braking.

There is no provincial legislation, policy, directive, or best practice to prohibit the use of engine brakes in Canada. There are currently 43 "No Engine Braking" signs located throughout Chatham-Kent.

Engine braking is a safety feature, now installed on most heavy duty trucks greater than 6 tonnes. Engine braking occurs when operators engage a switch that closes engine exhaust valves, thereby restricting engine pressure and drive train rotation. This driver-controlled action reduces vehicle speed without the use of a brake pedal. A higher engine noise is emitted for approximately 10 to 30 seconds, depending on the speed of the vehicle. It is used by many drivers for added safety and as a means to reduce wear and tear on brake pads.

Since 2015, there have been four requests to install engine braking signs, or an average of one request per year.

Comments

Administration continues to not recommend passing a by-law, which prohibits use of engine brakes. Administration's opposition to this prohibition is based on the trucking industry's best practice for safe braking with heavy loads or when on hills. Legal Services will also give legal advice to Council on this issue in Closed Session.

However, based on Council's direction, the attached revised By-law for "Regulation and Prohibition of Unusual Noises Likely to Disturb the Public and for the Prevention of

Public Nuisances”, includes a prohibition of engine braking for selected areas except when the use of engine brakes is required to stop safely. If Council wishes to pass this by-law, the following motion is suggested:

1. The revised By-law for “Regulation and Prohibition of Unusual Noises Likely to Disturb the Public and for the Prevention of Public Nuisances”, including a prohibition of engine braking for selected areas except when the use of engine brakes is required to stop safely, be passed;
2. The Director of Public Works be provided delegated authority to approve the design and placement of signs required under the revised by-law.

As noise in residential areas is the primary concern of engine braking, if Council’s direction is to pass the attached by-law, an amendment to the noise by-law is the best means of addressing these concerns. The amendment indicates that dynamic braking, engine braking, or engine retarding shall be prohibited at any time in residential areas where the speed limit is 60 km/h or below. In effect, this will cover the areas with higher population density and where the use of engine braking is less likely to be required for safety reasons.

The attached by-law would allow the use of engine braking where:

1. Engine braking is necessary for safety purposes. This exception would apply in a situation where engine brakes are needed to avoid a collision or otherwise needed for safe motor vehicle operation.
2. In areas identified with high volumes of trucks or in areas with speed postings greater than 60 km/h, as these are the areas where a truck is likely to need to use engine braking for safe operation.

Signage will indicate that use of engine brakes are permitted for safety reasons. The wording of the regulatory sign will be “Engine Braking Prohibited - Except for Safety” on a white background with black letters and trim, showing that it is a regulatory sign. Since there is no provincial or industry standard for this type of design, a Chatham-Kent design will be applied. It is recommended that the Director, Public Works be delegated the authority to provide final approval for the sign design and placement, based only on the following criteria:

1. On a truck route adjacent to a residential areas;
2. In advance of an intersection stop or yield controlled;
3. In advance of a speed limit reduction into an urban area.

Attachment A is the draft by-law for Council’s consideration. This is identical to the existing Noise By-law (41-2004) except for amendments to address the substance of this report. Specifically, Section 9 of Schedule 1 and Section (xiii) of Schedule 3 have been added to the by-law.

Areas of Strategic Focus and Critical Success Factors

The recommendations in this report support the following areas of strategic focus:

☐ Economic Prosperity:

Chatham-Kent is an innovative and thriving community with a diversified economy

☒ A Healthy and Safe Community:

Chatham-Kent is a healthy and safe community with sustainable population growth

☐ People and Culture:

Chatham-Kent is recognized as a culturally vibrant, dynamic, and creative community

☐ Environmental Sustainability:

Chatham-Kent is a community that is environmentally sustainable and promotes stewardship of our natural resources

The recommendations in this report support the following critical success factors:

☐ Financial Sustainability:

The Corporation of the Municipality of Chatham-Kent is financially sustainable

☐ Open, Transparent and Effective Governance:

The Corporation of the Municipality of Chatham-Kent is open, transparent and effectively governed with efficient and bold, visionary leadership

☐ Has the potential to support all areas of strategic focus & critical success factors

☒ Neutral issues (does not support negatively or positively)

Consultation

Legal Services was consulted, and reviewed the amendments to the attached by-law.

The Engineering Division of Infrastructure and Engineering Services was consulted, and reviewed the noise by-law. Their expert opinion will be sought for the design and placement of the signs.

Chatham-Kent Police Services was consulted and reviewed the attached by-law.

Financial Implications

The costs to convert the 43 existing signs is estimated at \$9,000 and will be covered within the approved Public Works operating budget. The cost to add additional signs for each approved request is estimated at \$425 per sign. The reflectivity of each sign must be checked regularly and signage be replaced as required. This cost will be added to the sign lifecycle budget.

Prepared by:

Pat Bruette
Acting Director, Public Works

Reviewed by:

Thomas Kelly P. Eng, MBA
General Manager
Infrastructure and Engineering Services

Consulted and confirmed the content of the consultation section of the report by:

Dave Taylor
Manager, Legal Services

Gary Conn
Chief, Police Services

Chris Thibert
Director, Engineering and Transportation Services

Judy Smith
Clerk, Municipal Governance

Attachment: Attachment A - By-law Amendment

C: Manager, Legal Services
Chief, Police Services
Director, Engineering and Transportation Services
Clerk, Municipal Governance

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CORPORATION OF THE MUNICIPALITY OF CHATHAM-KENT

BY-LAW NUMBER

A BY-LAW TO PROVIDE FOR THE REGULATION AND PROHIBITION OF
UNUSUAL NOISES OR NOISES LIKELY TO DISTURB THE PUBLIC AND FOR
THE PREVENTION OF PUBLIC NUISANCES.

WHEREAS it is deemed expedient to exercise the power conferred upon the Council by the Municipal Act, 2001, S.O. 2001 as amended, and other statutory authority;

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

NOW THEREFORE The Council of The Corporation of the Municipality of Chatham-Kent enacts as follows:

Interpretation

1. In this by-law:

“construction” includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, moving, land clearing, earth moving, grading, excavating, the laying of pipe, 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;

“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;

“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 premise of a person;

“Council” means the Council of The Corporation of the Municipality of Chatham-Kent;

“firearm” means any gun, including an air, pellet or spring gun, and a long-bow and a cross-bow;

“highway” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof;

“institutional area” means an area designated as an institutional zone in the Zoning By-law of The Corporation of the Municipality of Chatham-Kent as may be amended from time to time.

“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 railway, or other motor vehicles

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*, R.S.O. 1990, c.H.8, as amended;

“municipality” means The Corporation of the Municipality of Chatham-Kent;

“noise” means sound that is of such a nature that it is likely to disturb the inhabitants of the Municipality of Chatham-Kent or any of them.

“point of reception” means any point on the premises of a person where sound originating from other than those premises is received;

“residential area” means an area designated as residential in the Zoning By-law of the Municipality of Chatham-Kent, as may be amended from time to time;

“statutory holiday” means New Year’s Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day and Boxing Day;

General Prohibitions

2. No person shall emit or cause or permit the emission of sound resulting from any act listed in Schedule 1 – General Prohibitions, and which sound is clearly audible at a point of reception.

Prohibitions by Time

3. No person shall emit or cause or permit the emission of sound resulting from any act listed in Schedule 2 – Prohibitions by Time, if clearly audible at a point of reception within a prohibited time shown.

Exemption – Public Safety

4. Notwithstanding any other provision of this by-law, it shall be lawful to emit or cause or permit the emission of sound in connection with emergency measures undertaken:
 - a) for the immediate health, safety or welfare of the inhabitants of the Municipality or any of them; or,
 - b) for the preservation or restoration of property unless such sound is clearly of a longer duration or by nature more disturbing, than is reasonably necessary for the accomplishment of such emergency purpose, as determined by the Chief Administrative Officer for the municipality.

Exemptions Granted by the Municipality

Application to the Municipality

5. (1) Notwithstanding anything contained in this by-law, any person may make application to Municipality for an exemption from any of the provisions of this by-law with respect to any source of sound and the Municipality 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 a time period, not in excess of six months, during which it is effective and may contain such terms and conditions as the Municipality deems appropriate.

Details of Application for Exemption

- (2) The application mentioned in subsection (1) shall be made in writing, in the form attached as Schedule 4, and shall contain:

- a) the name, address and telephone number of the applicant;
- b) a description of the source and location of sound in respect of which exemption is sought;
- c) a statement of the particular provision or provisions of this by-law from which exemption is sought;
- d) the period of time, of a duration not in excess of six months, for which the exemption is sought;
- e) the reasons why the exemption should be granted;
- f) a statement of the steps, if any, planned or presently being taken to bring about compliance with the by-law;

Breach

- (3) A breach of any of the terms or conditions of an exemption granted by the Municipality that is caused or permitted by the applicant shall render the exemption null and void.

Exemption of Activities

- 6. This by-law shall not apply to a person who emits or causes or permits the emission of sound in connection with any of the activities listed in Schedule 3.

Exemption of Normal Farm Practices

- 7. This by-law shall not apply to a person who emits or causes or permits the emission of sound in connection with normal farming practices within the meaning of the *Farming and Food Production Protection Act*, 1998, S.O. 1998, c.1, as amended.

Severability

- 8. 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.

Enforcement

- 9. This by-law shall be enforced by members of the Chatham-Kent Police Services.

Penalty

- 10. 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 \$5,000.00, exclusive of costs and every such fine is recoverable under the *Provincial Offences Act*, R.S.O.1990, c.P.33.
- 11. The following by-laws, and any amendments thereto, are hereby repealed:

Bylaw 41-2004- A By-Law To Provide For The Regulation And Prohibition Of Unusual Noises Or Noises Likely To Disturb The Public And For The Prevention Of Public Nuisances, save for section 11 of that Bylaw which repealed previous Noise Bylaws.
- 12. This by-law shall come into full force and effect on the date of the final passing thereof.

READ FOR A FIRST SECOND AND THIRD TIME AND FINALLY PASSED, this
day of .

Mayor – Randy Hope

Clerk – Judy Smith

SCHEDULE 1

General Prohibitions

1. Racing of any motorized vehicle other than in a lawful racing event.
2. The operation of a motor vehicle in such a way that the tires squeal.
3. The operation of any combustion engine, pneumatic device or construction equipment without an effective exhaust or intake-muffling device in good working order and in constant operation.
4. The operation of a motor vehicle or a motor vehicle with a trailer resulting in banging, clanking, squealing or other 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, anywhere within the geographic area of the Municipality of Chatham-Kent, where the point of reception is in a Residential Area or Institutional 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 or 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, carburetor or the like, when such work is performed other than for profit.
6. The use of any mechanical equipment that is not operating or being maintained in accordance with the manufacturers specifications resulting in noise other than that emitted in the normal operation of the equipment.
7. 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.
8. The operation of a stereo or other electronic device designed to amplify sound in, or on, a motor vehicle in such a way that the sound can easily be heard outside of the motor vehicle.
9. The use of dynamic braking, engine braking or engine retarding within a residential area with a speed limit of 60 km/h or below to slow a vehicle down, as opposed to using additional external braking mechanisms such as friction brakes or magnetic brakes.

SCHEDULE 2

PROHIBITIONS BY TIME

1. 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 where required to authorize by law or in accordance with good safety practices.	Monday – Saturday Between 11:00p.m. and 7:00a.m. Sunday and Statutory Holidays – at all times.
2. The operation of any electronic device or group of connected electronic devices incorporated one or more loudspeakers or other electromechanical transducers, and intended for the production, reproduction or amplification of sound in a residential area.	Monday – Saturday Between 11:00p.m. and 7:00a.m. Sunday and Statutory Holidays – at all times.
3. All selling or advertising by shouting or outcry or amplified sound.	Monday – Saturday Between 11:00p.m. and 7:00a.m. Sunday and Statutory Holidays – at all times.
4. 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.	Monday – Saturday Between 11:00p.m. and 7:00a.m. Sunday and Statutory Holidays – at all times.
5. The operation of any construction equipment in connection with construction.	Monday – Saturday Between 11:00p.m. and 7:00a.m. Sunday and Statutory Holidays – at all times.
6. The operation of a combustion engine which, i) is, ii) is used in, or iii) is intended for use in, a toy or model or replica of a larger device, which model or replica has no function other than amusement and which is not a conveyance.	Monday – Sunday Between 11:00p.m. and 7:00a.m. Including Statutory Holidays.
7. The operation of any motorized conveyance other than on a highway or other place intended for its operation.	Monday – Sunday Between 11:00p.m. and 7:00a.m. Including Statutory Holidays.
8. The venting, release or pressure relief of air, steam or other gaseous material, produce or compound from any autoclave, boiler, pressure vessel, pipe, valve, machine, device or system.	Monday – Saturday Between 11:00p.m. and 7:00a.m. Sunday and Statutory Holidays – at all times.
9. Persistent barking, calling or whining by any dog or other persistent noise making by any pet.	At all times.
10. The operation of any powered or non-powered tool for domestic purposes other than snow removal.	Monday – Sunday Between 11:00p.m. and 7:00a.m. Including Statutory Holidays.
11. The operation of solid waste bulk lift or refuse compacting equipment.	Monday – Saturday between 11:00p.m. and 7:00a.m. Sunday and Statutory Holidays – at all times.
12. Yelling or shouting.	At all times.
13. The discharge of firearms, other than as part of an otherwise lawful hunt, gun club, or where such discharge has agricultural purposes.	At all times.
14. The detonation of fireworks or explosive devices not used in construction.	At all times except for the celebration of Victoria Day, the

	birthday of the reigning Sovereign, Canada Day (July 1 st) and American Independence Day (July 4 th).
15. The operation of a racing event licensed by the Municipality.	Monday – Saturday between 12:00p.m. and 7:00a.m. Sundays and Statutory Holidays – at all times.

SCHEDULE 3

ACTIVITIES TO WHICH THE BY-LAW DOES NOT APPLY

A list of sources (activities) shall constitute this Schedule and shall specify those events which Council considers to be exempt from the provisions of the By-law.

- (i) Road and Bicycle races authorized by the Municipality of Chatham-Kent.
- (ii) Regimental salutes.
- (iii) Parades authorized by the Municipality of Chatham-Kent.
- (iv) Fireworks displays authorized by the Municipality of Chatham-Kent.
- (v) Midways and Circuses authorized by the Municipality of Chatham-Kent.
- (vi) Sporting, Recreational and Entertainment events in public parks, buildings or grounds authorized by the Municipality of Chatham-Kent.
- (vii) Musical and other performances in public parks, buildings or grounds authorized by the Municipality of Chatham-Kent.
- (viii) Special neighbourhood social activities on streets or other public land authorized by the Municipality of Chatham-Kent.
- (ix) The discharge of firearms by Police Officers acting in the due performance of their duties.
- (x) Transformers and diesel operated water pumps owned by the Public Utilities Commission or CK Hydro and necessary preventive maintenance work undertaken by the Public Utilities Commission or CK Hydro.
- (xi) Necessary municipal operations, including but not limited to snow clearing, street cleaning and garbage collection, undertaken by or on behalf of the Municipality of Chatham-Kent.
- (xii) Snow Removal that is essential for the normal operation of a business.
- (xii) Church clocks striking the hour and chimes ringing and the playing of any carillon.
- (xiii) The use of dynamic braking, engine braking or engine retarding to slow a vehicle down if such use is necessary to stop safely.

SCHEDULE 4

CHATHAM-KENT NOISE CONTROL BY-LAW

NOTICE OF INTENTION AND
APPICATION FOR EXEMPTION

Name: _____

Address: _____

Source and location of sound: _____

Applicable by-law section: _____

Time Period of Exemption

From: _____ 200__ to _____ 200__.

Reason for Exemption: _____

Attempts to comply: _____

