

THE CORPORATION OF THE MUNICIPALITY OF KILLARNEY

BY-LAW NO. 2022-28

BEING A BY-LAW TO PROHIBIT AND REGULATE NOISES IN THE MUNICIPALITY OF KILLARNEY

WHEREAS authority is granted to the councils of all municipalities under Section 129 (a)(b) of the *Municipal Act, 2001, S.O. 2001, c. 25*, to prohibit and regulate noises likely to disturb the inhabitants within the Municipality of Killarney;

AND WHEREAS the Municipal Council deems it expedient to pass a by-law to prohibit and regulate noise;

NOW THEREFORE the Council of the Corporation of the Municipality of Killarney enacts as follows:

SECTION I - SHORT TITLE:

1.1 This By-Law may be cited as the “Noise Control By-Law”.

SECTION II - DEFINITIONS AND INTERPRETATION

2.1 In this By-Law,

“Audio Device” means a radio, stereo, CD player, MP3 player, television, public address system or other similar electronic device capable of emitting sounds, but does not include a two-way radio, weather radio or a device that can only be heard by using earphones/headphones;

“Authorized Emergency Vehicle” means any ambulance or hearse, any vehicle of the fire department, any vehicle of the provincial or federal police, any vehicle (including a snow plough) operated by or for the Municipality or a public utility company while actively engaged in the construction, maintenance or repair of any highway, or any equipment or facilities thereon, or a snow plough or other maintenance vehicle operated by or for the Municipality;

“Clearly Audible” means that sound from the source in question is easily perceptible without undue effort, to a disinterested person with no hearing disability;

“Construction” means 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;

“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, derrick loaders, scrapers, pavers, generators, off-highway haulers or trucks, ditchers, compactors and rollers, pumps, concrete mixers, graders or other material handling equipment;

“Council” means Council of the Municipality of Killarney;

“Emergency” means a sudden and unexpected occurrence demanding immediate action to prevent possible injury, loss of life or substantial property damage;

“Excessive” in reference to barking, howling, whining, squawking, or other sound-making by an animal or bird. Has the same meaning as persistent;

“Fireworks” mean display fireworks, family fireworks, theatrical fireworks and prohibited fireworks.

- a) **Display fireworks** means high-hazard fireworks for recreation that are classified Class 7, Division 2, Subdivision 1 under the *Explosive Act* as amended. The explosives regulations made thereunder, and includes, but are not limited to, rockets, serpents, shells, bombshells, tourbillion, maroons, large wheels, bouquets, barrages, bombardos, waterfalls, fountains, batteries, illuminations, set pieces and kitchens.
- b) **Family fireworks** means low-hazard fireworks for recreation that are classified under Class 7, Division 2, Subdivision 2 of the *Explosives Act* as amended, and the explosives regulations made under, and includes but is not limited to, firework showers, fountains, golden rain, lawn lights, pinwheels, roman candles, volcanoes, sparklers and other similar devices, but does not include Christmas crackers, and paper containing not more than 25/100 grain of explosives on average per cap, devices for use with such caps, safety flares or marine rockets.
- c) **Prohibited fireworks** includes but is not limited to firecrackers, cigarette loads or kings, exploding matches, sparkling matches, ammunition for miniature tie clip, cuff link, or keychain pistols, auto alarms or jokers, cherry bombs, M-80 and silver salutes and flash crackers; throw down and step on torpedoes, and crackling balls; exploding golf balls, stink bombs and smoke bombs, tear gas pens and launchers, party peppers and table bombs, table rockets and battle sky-rockets, fake firecrackers and other trick devices or practical jokes, as included in the list of Prohibited Fireworks as published from time to time under the *Explosives Act* as amended.
- d) **Theatrical fireworks** means an authorized explosive of a class set out in Section 6 of the Explosives Act, Explosives Regulations (C.R.C. c. 599), that is made, manufactured or used to produce a pyrotechnic theatrical effect in connection with a motion picture, theatre or television production or as a performance before a live audience.

“Firecracker” means a pyrotechnic that explodes when ignited and does not make any subsequent display or visible effect after the explosion but does not include paper caps containing less than 25/100 of a grain of explosives on average per cap, devices for use of such caps, safety flares or marine rockets;

“Manufacturing Industry” means the manufacturing goods from raw materials;

“Motor vehicle racing” means the operation of a motor vehicle over a set course, whether in competition with other vehicles, for racing, training, lapping, testing or instructional purposes, for recreational purposes, or for any other purpose and includes any warm up or testing done on the premise in preparation for such operation of a Motor Vehicle;

“Motorized Vehicle” means an automobile, motorcycle, and any other vehicle propelled or driven otherwise than by muscular power or wind; 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 as amended;

“Municipality” means the land within the geographic limit of the Corporation of The Municipality of Killarney;

“Municipal Law Enforcement Officer (MLEO)” means an officer appointed by the Council of the Municipality to enforce the Municipality’s by-laws.;

“Noise” means unwanted sound. For the purpose of this by-law, sound in excess of the limits or specifically prohibited herein is defined to be noise,

“Persistent” in reference to barking, howling, whining, squawking or other sound-making by an animal or bird means continuously or intermittently for an aggregate period of at least 10 minutes out of any 60-minute period;

“Person” includes any individual, corporation, partnership, company, association or party and the heirs, executors, administrators, or other legal representative of such person, to whom the context can apply according to law, shall include any group of persons comprising a society or other organization and shall include the plural wherein the context requires;

“Place of worship” means a building dedicated to religious worship and includes a church, synagogue, temple, mosque, monastery or convent;

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

“Property” means a building or structure or part of a building or structure and includes the lands appurtenant thereto and all mobile homes, mobile buildings or mobile structures and vacant land;

“Quiet Zone” means an area in the municipality where quiet is of particular importance and as more particularly designated in Schedule “B”;

“Residential Area” means any property within the municipality which is zoned for residential uses by an applicable zoning by-law or which is used in whole or in part for human habitation, in accordance with the zoning of the property or where human habitation is a legal non-conforming use.

SECTION III – PROHIBITIONS

3.1 No person shall cause or permit the creation of any noise or unusual sound that disturbs or are likely to disturb any inhabitant of the Municipality as outlined in Schedule “A” attached.

SECTION IV – EXEMPTIONS

4.1 None of the provisions for this by-Law shall apply to:

- (a) The use in a reasonable manner, any apparatus or mechanism for the amplification of the human voice or music, in a public park or any other commodious space in connection with any public election meeting, public celebration or other reasonable gathering, provided written permission from the Municipality has first been obtained.
- (b) Necessary municipal or public utility operations carried out in the interest of public necessity and convenience, including but not limited to snow clearing and snow removal, street cleaning, and garbage collection, undertaken by or on behalf of the Municipality.
- (c) Any authorized emergency vehicle or service animal of the Police or Fire Department, the Municipality or its agents, any ambulance or any public service or emergency vehicle while answering a call.
- (d) The use in a reasonable manner of vehicles and equipment when utilized for the clearing and removal of snow from private property.
- (e) Noise resulting from the measures undertaken in an emergency.
- (f) Any military or other band or any parade operating under written permission obtained from the Municipality.
- (g) The ringing of church bells, school bells or the sounding of a public-address system on school property in connection with normal operation of educational institutions during regular business hours and / or during school or church authorized activities.

- (h) Signaling devices utilized as traffic and pedestrian control devices at intersections and crosswalks
- (i) Any sound arising from the operation of any railway operated under the *Railway Act of Canada* as amended.
- (j) All licensed commercial forestry operations including sawmills.
- (k) Activities of a Normal Farm Practice carried out as part of an Agricultural Operation, as defined in the *Farming and Food Production Protection Act 1998, SO 1998* as amended or any successor legislation and located on a property zoned for agricultural purposes in accordance with the Municipal Zoning By-law as amended.
- (l) Any noise necessary to the operation of equipment on designated industrial sites in accordance with the Municipal Zoning By-law as amended between the hours listed in Schedule “A”.
- (m) Noises resulting from reasonable construction and maintenance operations between the hours listed in Schedule “A”.
- (n) Generators producing electricity during power outages ONLY at permanent residences or businesses.

SECTION V – APPLICATION TO COUNCIL FOR EXEMPTION

- 5.1 Notwithstanding any other provisions of 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 they might be prosecuted. Council, by resolution, may refuse to grant any exemption or agree to grant lesser exemption and any exemption granted shall specify the time period, not in excess of six months, during which it is effective and may contain such terms and conditions as Council see fits.
- 5.2 The application shall contain:
 - (a) The name and address of the applicant;
 - (b) A description of the noise in respect of which the exemption is being sought;
 - (c) The period of time and date(s) for which the exemption is being sought.
 - (d) Payment of any applicable fees as set out in the Municipality’s Fees and Charges By-law.
- 5.3 The application must be submitted to By-law services no later than sixty (60) days before the event.
- 5.4 By-law services will review and comment on the application and present it to Council with recommendations.
- 5.5 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.
- 5.6 Breach by the applicant of any of the terms or conditions of any exemption granted by Council shall render the exemption null and void.

SECTION VI – ADMINISTRATION & ENFORCEMENT

- 6.1 This By-law shall be administered and enforced by the MLEO of the Municipality or such other person or persons as Council may, by By-law, appoint. Nothing herein shall be deemed to limit the ability of the Ontario Provincial Police or any police force with sufficient jurisdiction to enforce this By-law at any time.

- 6.2 Any MLEO may enter on any property at any reasonable time for the purpose of carrying out an inspection to determine whether the provisions of this By-law have been complied with.

SECTION VII – OFFENCES

- 7.1 Every person who contravenes any provision of this By-Law is guilty of an offence and upon conviction is liable to a fine pursuant to the provisions of the Provincial Offences Act, R.S.O. 1990, c. P. 33.
- 7.2 Upon registering a conviction for a contravention of any provision of this By-Law, the Provincial Offences Court may, in addition to any other remedy and to any penalty imposed by this By-Law, make an order prohibiting the continuation or repetition of the offence by the person convicted.
- 7.3 No person shall hinder or otherwise obstruct, nor attempt to hinder or obstruct, either directly or indirectly, an Officer, an employee and/or agent of the Municipality in the lawful exercise of a power or duty under this By-Law.
- 7.4 The Administrative Monetary Penalty System By-law applies to each administrative penalty issued pursuant to this By-law.
- 7.5 Each person who contravenes any provision of this By-Law shall, upon issuance of a Penalty Notice in accordance with the Administrative Monetary Penalty System By-law, be liable to pay to the Municipality an administrative monetary penalty.

SECTION VIII – SEVERABILITY

- 8.1 Should a court of competent jurisdiction declare a part or whole of any provision of this By-Law to be invalid or of no force and effect, the provision or part is deemed severable from this By-Law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under law.

SECTION IX – SCHEDULES

- 9.1 Schedules “A”, “B”, “C”, “D”, “E” shall be deemed to form part of this By-Law.

SECTION X – AUTHORITY

- 10.1 That By-law No. 2019-26 and any by-laws inconsistent with this by-law are hereby repealed.
- 10.2 This By-Law shall come into force and take effect on the day it is passed.

READ A FIRST, AND TAKEN AS READ A SECOND AND THIRD TIME AND FINALLY PASSED IN OPEN COUNCIL THIS 31ST DAY OF MAY, 2022.

ORIGINAL DOCUMENT SIGNED

Nancy Wirtz, Mayor

ORIGINAL DOCUMENT SIGNED

Candy Beauvais, Clerk-Treasurer

**SCHEDULE “A”
NOISE CONTROL BY-LAW 2022-28
MUNICIPALITY OF KILLARNEY**

PROHIBITIONS – TIME AND PLACE

Whenever times are named in this By-Law, they shall mean Standard time or Daylight Savings Time, whichever is in official current use in the Municipality.

Item	Prohibited Act	Quiet Zones		Residential (WR, R1, R2, R3)		All Other Zones	
		Monday – Friday and non-holidays	Saturday Sunday and Statutory Holidays	Monday – Friday and non-holidays	Saturday Sunday and Statutory Holidays	Monday – Friday and non-holidays	Saturday Sunday and Statutory Holidays
1.	The operation of any auditory signaling device including but not limited to ringing of bells, gongs, sirens, horns, whistles, motor vehicle horn or other warning device and the production or reproduction of any similar sound by electronic means except where authorized or required by law.	At any time	At any time	At any time	At any time	Between 9:00 pm to 7:00 am the next day	Between 9:00 pm to 9:00 am the next day
2.	Excessive noises made by a human. This shall include noise arising from the banging of drums or another unamplified musical instrument.	At any time	At any time	Between 9:00 pm to 7:00 am the next day	Between 9:00 pm to 9:00 am the next day	Between 11:00 pm to 7:00 am the next day	Between 11:00 pm to 9:00 am the next day
3.	Racing of a motor vehicle other than in a municipally approved racing event.	At any time	At any time	At any time	At any time	At any time	At any time
4.	Operation of any combustion engine or pneumatic device or construction equipment without an effective exhaust or intake muffling device in good working order and in constant operation. This will include but not be limited to the operation of a motor vehicle, off-road vehicle, motorized snow vehicle or other similar motorized conveyance for recreational purposes.	At any time	At any time	At any time	At any time	At any time	At any time
5.	Operation of a vehicle or a vehicle with a trailer resulting in banging, clanking, squealing or other like sound due to improperly secured load or equipment or inadequate maintenance.	At any time	At any time	At any time	At any time	At any time	At any time

6.	<p>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 (also known as idling), unless:</p> <ol style="list-style-type: none"> 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 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 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 prevailing low temperatures make longer idling periods necessary immediately after starting the motor or engine; or 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. 	At any time	At any time	At any time	At any time	Between 9:00 pm to 7:00 am the next day	Between 9:00 pm to 9:00 am the next day
7.	<p>Operation of any electronic device or group of connected electronic devices incorporation one or more loudspeakers or other electro-mechanical transducers and intended for the production, reproduction or amplification of sound in a stationary installation or in a motor vehicle.</p>	At any time	At any time	Between 11:00 pm to 7:00 am the next day	Between 11:00 pm to 9:00 am the next day	Between 11:00 pm to 7:00 am the next day	Between 11:00 pm to 9:00 am the next day
8.	<p>Operation of a generator persistently unless;</p> <ol style="list-style-type: none"> recharging an off-grid, solar system or equivalent; they are producing electricity for a residence or business during a power outage. 	Between 7:00 pm to 7:00 am the next day	Between 7:00 pm to 9:00 am the next day	Between 7:00 pm to 7:00 am the next day	Between 7:00 pm to 9:00 am the next day	Between 11:00 pm to 7:00 am the next day	Between 11:00 pm to 9:00 am the next day
9.	<p>Excessive barking, calling, whining, squawking or other similar noise making by any domestic pet or any other animal or bird kept or used for any purpose other than agricultural or other authorized work.</p>	At any time	At any time	At any time	At any time	At any time	At any time
10.	<p>Noises or sounds created by the repairing, wrecking, dismantling or modifying of any vehicle, motor, machine or any part or parts.</p>	At any time	At any time	Between 9:00 pm to 7:00 am the next day	Between 9:00 pm to 9:00 am the next day	Between 9:00 pm to 7:00 am the next day	Between 9:00 pm to 9:00 am the next day

11.	Noises arising out of any manufacturing industry which has the effect of disturbing the repose of any person, unless permission has been granted by Council.	At any time	At any time	Between 7 pm to 7 am the next day	Between 7 pm to 7 am the next day	Between 7 pm to 7 am the next day	Between 7 pm to 7 am the next day
12.	Operation of an engine which, (i) is, or (ii) is used in, or (iii) is intended for use in, a toy, model, drone or replica of any device which model or replica has no function other than amusement, and which is not a conveyance.	At any time	At any time	At any time	At any time	Between 9:00 pm to 7:00 am the next day	Between 9:00 pm to 9:00 am the next day
13.	Operation of any equipment in connection with construction	At any time	At any time	Between 7:00 pm to 7:00 am the next day	Between 7:00 pm to 9:00 am the next day	Between 9:00 pm to 7:00 am the next day	Between 9:00 pm to 9:00 am the next day
14.	Operation of any tool or powered device such as but not limited to a lawnmower, chain saw, generator or pressure washer for domestic purposes other than snow removal.	Between 7:00 pm to 7:00 am the next day	Between 7:00 pm to 9:00 am the next day	Between 9:00 pm to 7:00 am the next day	Between 9:00 pm to 9:00 am the next day	Between 11:00 pm to 7:00 am the next day	Between 11:00 pm to 9:00 am the next day
15.	Noise associated with loading, unloading, delivery, packing, unpacking or otherwise handling of any containers, products, materials, or refuse, whatsoever, unless necessary for the maintenance of essential services or the moving of private household effects.	Between 7 pm to 7 am the next day	Between 7 pm to 7 am the next day	Between 7 pm to 7 am the next day	Between 7 pm to 7 am the next day	Between 11:00 pm to 7:00 am the next day	Between 11:00 pm to 9:00 am the next day
16.	Discharge of a firearm.	At any time	At any time	At any time	At any time	Between 9:00 pm to 7:00 am the next day*	Between 9:00 pm to 9:00 am the next day*
17.	Detonation of fireworks.	At any time except: (a) after 7:00 pm and before 11:00 pm and one of the following: - the two (2) days immediately preceding and one (1) day following Victoria Day - the two (2) days immediately preceding and one (1) day following Canada Day - the two (2) days immediately preceding and one (1) day following July 4 th - the two (2) days before the Civic Holiday and the one (1) day following (b) until 12:00 midnight on New Year's Eve and until 12:30 am on New Year's Day (c) any other days and times authorized by resolution of Council					
18.	Unusual noise or noises likely to disturb the inhabitants of the Municipality.	At any time	At any time	At any time	At any time	At any time	At any time

* Provincial/Federal legislation supersedes the provisions outlined in this By-Law relating to prohibited times for the discharge of firearms.

SCHEDULE "B"
NOISE CONTROL BY-LAW 2022-28
MUNICIPALITY OF KILLARNEY

QUIET ZONES

SCHOOLS
N/A
PLACE OF WORSHIP
N/A
PUBLIC PARKS/BALLFIELDS/PLAYGROUNDS
N/A
CEMETERIES
All Saints Cemetery
Ward 2 Cemetery
St. Bonaventure Cemetery

**SCHEDULE “C”
NOISE CONTROL BY-LAW 2022-28
MUNICIPALITY OF KILLARNEY**

SPECIAL EVENTS

Canada Day Celebrations
Killarney Volunteer Fire Department – Annual Fish Fry
Killarney Winter Carnival
Killarney Birthday Celebrations

**SCHEDULE “D”
NOISE CONTROL BY-LAW 2022-28
MUNICIPALITY OF KILLARNEY**

PART 1 – PROVINCIAL OFFENCE ACT FINES

ITEM	COLUMN 1 SHORT FORM WORDING	COLUMN 2 PROVISION CREATING OR DEFINING OFFENCE	COLUMN 3 SET FINE
1.	Cause/allow noise from the operation of an auditory signaling device.	Section 3.1 Sch A(1)	\$125.00
2.	Cause/allow excessive noise made by a human.	Section 3.1 Sch A(2)	\$125.00
3.	Cause/allow prohibited racing.	Section 3.1 Sch A(3)	\$200.00
4.	Cause/allow the operation of an engine without muffling device.	Section 3.1 Sch A(4)	\$125.00
5.	Cause/allow noise from a operation of vehicle or vehicle with trailer.	Section 3.1 Sch A(5)	\$125.00
6.	Cause/allow excessive noise from idling	Section 3.1 Sch A(6)	\$125.00
7.	Cause/allow the use of an electronic audio device during prohibited hours.	Section 3.1 Sch A(7)	\$125.00
8.	Cause/allow noise from use of generators excessively	Section 3.1 Sch A(8)	\$125.00
9.	Allowing persistent noise from a domestic animal	Section 3.1 Sch A(9)	\$125.00
10.	Cause/allow excessive noise while repairing machinery.	Section 3.1 Sch A(10)	\$125.00
11.	Cause/allow excessive noise from any manufacturing industry.	Section 3.1 Sch A(11)	\$300.00
12.	Cause/allow excessive noise from a model, toy or drone.	Section 3.1 Sch A(12)	\$85.00
13.	Cause/allow noise from a construction operation.	Section 3.1 Sch A(13)	\$300.00
14.	Cause/allow noise operating a domestic tool or device.	Section 3.1 Sch A(14)	\$85.00
15.	Cause/allow noise from Loading or delivering items outside of allowed hours	Section 3.1 Sch A(15)	\$85.00
16.	Cause/allow the discharge of a firearm.	Section 3.1 Sch A(16)	\$300.00
17.	Cause/allow the discharge of fireworks when prohibited.	Section 3.1 Sch A(17)	\$300.00
18.	Cause/allow unusual noise.	Section 3.1 Sch A(18)	\$300.00

NOTE: Penalty Provisions for the offences indicated above is Section 7 of the By-law 2022-28, a certified copy of which has been filed.

**SCHEDULE “E”
NOISE CONTROL BY-LAW 2022-28
MUNICIPALITY OF KILLARNEY**

NOISE CONTROL POLICY

All property owners are required to limit noise according to standards set in the “Noise Control By-law”.

When a complaint is received, an MLEO will investigate to determine if a violation exists. If a violation is found, the MLEO can issue a fine advising the owner of the violation and requiring that it be remedied.

This by-law will not be used to resolve issues between neighbours.

In view of the fact that the Municipality of Killarney has many diverse neighborhoods such as village areas, waterfront residential, waterfront commercial, farmland and rural residential, enforcement will have to be done with some discretion taking into consideration the complainant, the geographic location of the property in question, the size of the property in question, the type of property in question (farmland vs urban lot) and the effect of the infraction on adjacent properties and the general well-being of the residents of the area, and the Municipality. As the complaints and investigations become more numerous, past practice data as well as the consistent application of the policy will become more evident and will act as a guide in the application of the by-law.

This information is for convenience and quick reference only. For specific information, contact the Municipal Office.