

ADMINISTRATIVE REPORT

TO: Planning & Development Committee

FROM: B. Newell, Chief Administrative Officer

DATE: July 22, 2021

RE: Noise Bylaw No. 2931, 2021

Administrative Recommendation:

THAT Bylaw No. 2931, 2021, Regional District of Okanagan-Similkameen Noise Regulation and Prohibition Bylaw be forwarded to the Regular Board meeting to be read a first, second and third time and be adopted.

Purpose:

To introduce Regional District of Okanagan-Similkameen Noise Regulation and Prohibition Bylaw No. 2931, 2021 (“Noise Bylaw”) which consolidates and updates the individual Noise Control Bylaws for Areas ‘C’, ‘D’, ‘E’, ‘F’, ‘H’ and ‘I’.

Reference:

Noise Control Bylaws:

[Electoral Area ‘C’ – Bylaw #2397](#)

[Electoral Area ‘D’ and ‘I’ – Bylaw #1527.01](#)

[Electoral Area ‘E’ – Bylaw #2386](#)

[Electoral Area ‘F’ – Bylaw #1526](#)

[Electoral Area ‘H’ – Bylaw #2628](#)

Background:

There are currently 5 separate Noise Control bylaws for Electoral Areas ‘C’, ‘D’, ‘E’, ‘F’, ‘H’ and ‘I’. Each of the existing bylaws are consistent in wording with the exception of minor differences in the hours for construction works. In addition, the Noise Control Bylaw for Electoral Area ‘F’ has fewer defined terms.

With the anticipated introduction of the development services software it is an opportune time to create efficiencies with the service by consolidating the bylaws and updating the definitions and requirements.

Analysis:

The following revisions have been made to the Noise bylaw:

1. Housekeeping amendments to include reference to Electoral Area ‘I’
2. Additional definitions including defining ‘Authorized Person’, ‘Bylaw Enforcement Officer’, ‘Noise’, and ‘Regional District’;
3. Additional headings for “Jurisdiction” and “Interpretation” to assist in clarification in enforcing the provisions of the Noise Bylaw,
4. New heading for “Administration and Enforcement” granting the Bylaw Enforcement authorization to enter onto property and adding a provision prohibiting persons from obstruction of the Bylaw Enforcement Officer
5. Expanded wording under “Regulations” to clarify prohibited noise. Removing the provision for anti-idling as it is captured under the general noise provisions.
6. New heading for “Construction Hours” and revised construction hours to promote consistency throughout the Regional District. A request was made to have construction hours eliminated for Sundays. Rather than eliminate the provision entirely it was determined that the offending construction noise was related to large commercial companies working 7 days per week on new subdivisions and not necessarily related to the ‘weekend warriors’ that were working on their homes. Introducing a new provision prohibiting construction for ‘profit or gain’ on Sundays would capture this intent. Enforcement action would be by submitted complaint.

Current constructions hours:

Day	Time
Monday – Saturday	7:00 am - 8:00 pm (Areas, C, D, E, H & I) 6:00 am - 10:00 pm (Area F)
Sunday / Stat Holidays	11:00 am - 4:00 pm (Area E) 10:00 am - 5:00 pm (Area C, D, H & I) 8:00 am - 10:00 pm (Area F)

Construction hours of member municipalities:

Municipality	Weekdays	Saturdays	Sundays
Keremeos	6:00 am – 10:00 pm	6:00 am – 10:00 pm	6:00 am – 10:00 pm
Princeton	7:00 am – 8:00 pm	8:00 am -8:00 pm	No commercial activity on Sunday or Statutory Holiday (silent on hours of regular construction)
Osoyoos	7:00 am – 8:00 pm	7:00 am – 8:00 pm	8:00 am – 8:00 pm
Oliver	7:00 am – 8:00 pm	7:00 am – 8:00 pm	8:00 am – 8:00 pm
Penticton	7:00 am – 10:00 pm	7:00 am – 10:00 pm	7:00 am – 10:00 pm

Summerland	7:00 am – 10:00 pm	7:00 am – 10 pm	7:00 am – 10:00 pm (with no commercial activity)
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Proposed construction hours:

Day	Time
Monday – Saturday	7:00 am - 8:00 pm
Sunday and Statutory Holidays	10:00 am - 5:00 pm (with no commercial activity on a Sunday)

7. Expanded section for Exemptions with the previous exemption for farm practices incorporated therein and a provision exempting the operation of motorized lawn grooming equipment between the hours of 7:00 am to 9:00 pm;
8. Revisions to the application process for temporary exemptions with an increased fee from \$75 to \$300. This exemption is very rarely applied for. The fee would be added to the Fees and Charges Bylaw.

If the bylaw is approved for adoption amendments to the Bylaw Notice Enforcement Bylaw will be required to amend section numbers for issuance of bylaw offence notices.

Alternatives:

1. THAT Bylaw No. 2931, 2021, Regional District of Okanagan-Similkameen Noise Regulation and Prohibition Bylaw not be forwarded to the Regular Board meeting to be read a first, second and third time and be adopted;
2. THAT Bylaw No. 2931, 2021, Regional District of Okanagan-Similkameen Noise Regulation and Prohibition Bylaw be amended as follows:
 - a) TBD

Respectfully submitted:

“Laura Miller”

L. Miller, Building & Enforcement Services Manager

Attachments: No. 1 – Redlined draft bylaw

REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN

BYLAW NO. 2931, 2021

A bylaw to regulate and prohibit the making or causing of noises or sounds in Electoral Areas 'C', 'D', 'E', 'F', 'H' and 'I' of the Regional District of Okanagan-Similkameen

WHEREAS the *Local Government Act* authorizes the Regional District of Okanagan-Similkameen to regulate and prohibit, by bylaw, making or causing of noises or sounds.

AND WHEREAS the following bylaws have been adopted to establish the service for the regulation and prohibition of making or causing of noises or sounds in Electoral Areas 'C', 'D', 'E', 'F', 'H' and 'I':

- 'Electoral Area 'C' Noise Control Regulatory Service Establishment Bylaw No. 2396, 2007;
- 'Electoral Area 'D' Noise Control Extended Service Establishment Bylaw No. 1129, 1991;
- 'Electoral Area 'E' Noise Control Regulatory Service Establishment Bylaw No. 2385, 2006;
- 'Electoral Area 'F' Noise Control Extended Service Establishment Bylaw No. 1436, 1993;
- 'Electoral Area 'H' Noise Control Service Establishment Bylaw No. 2627, 2013;

NOW THEREFORE, the Board of the Regional District of Okanagan-Similkameen, in open meeting assembled, enacts as follows:

1. Citation

- 1.1 This Bylaw shall be cited as the Regional District of Okanagan-Similkameen Noise Regulation and Prohibition Bylaw No. 2931, 2021.

2. Definitions

- 2.1 Words or phrases defined in the *Interpretation Act*, *Local Government Act* or *Community Charter* shall have the same meaning when used in this Bylaw, unless defined in this Bylaw or unless the context otherwise requires. Unless otherwise stated, and notwithstanding the case used (upper case or lower case) or whether in italics, when words or phrases that are defined in this section of this Bylaw are used in the body or schedules of this Bylaw, they have the meaning ascribed to them as set out in this section:

“Authorized Person” means the Chief Administrative Officer or designate for the Regional District of Okanagan-Similkameen.

“Bylaw Enforcement Officer” means the person or persons appointed from time to time by the Regional District Board to enforce and administer this bylaw and shall include any Peace Officer

“Emergency Vehicle” shall have the meaning given to the interpretation section of the *Motor Vehicle Act*.

“Peace Officer” means a police officer, police constable, constable or other person employed for the preservation and maintenance of the public peace.

“Normal Farm Practise” means a practice that is conducted by a farm business in a manner consistent with proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances and includes a practice that makes use of innovative technology in a manner consistent with proper advanced farm management practices, **as determined by the Farm Industry Review Board.**

“Noise” means any sound that is consistently loud or consistently harsh or consistently undesirable and includes any loud outcries, clamours, shouting or movements, whether mechanically amplified or not and whether they are human caused or from a domesticated animal and/or pet.

“Regional District” means the Regional District of Okanagan-Similkameen.

3. Interpretation

3.1 The headings contained in this Bylaw are for convenience only and are not to be construed as defining or in any way limiting the scope or the intent of the provisions of this Bylaw.

3.2 Any act or enactment referred to herein is a reference to an enactment of the Province of British Columbia and regulations thereto, as amended, revised, consolidated or replaced from time to time, and any bylaw referred to herein (as may be cited by short title or otherwise) is a reference to an enactment of the Regional District Board, as amended, revised, consolidated or replaced from time to time.

4. Administration and Enforcement

4.1 The Bylaw Enforcement Officer is hereby authorized to enter at all reasonable times upon any property within the Regional District for the purpose of ascertaining whether the regulations under this Bylaw are being observed, or whether a requirement of the Regional District is being met.

4.2 No person shall prevent or obstruct, or attempt to prevent or obstruct, the Bylaw Enforcement Officer from the exercise or performance of his or her powers, duties or functions under this bylaw.

5. Regulation

- 5.1 No person shall make or cause, or permit to be made or caused, any noise in the **Regional District**, which disturbs, or tends to disturb, the quiet, peace, rest, enjoyment, comfort or convenience of the neighborhood, or of persons in the vicinity.
- 5.2 No person being the owner or occupier or tenant of real property shall allow or permit such real property to be used so that excessive or persistent noise which occurs therein or emanates therefrom, disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort, or convenience of the neighbourhood or persons in the vicinity.
- 5.3 No person shall play or operate any radio, stereophonic equipment or other instrument or any apparatus for the production or amplification of sound either in or on private premises or in any public place in a manner which disturbs or tends to disturb the quiet, peace, rest, enjoyment or convenience of the neighbourhood or persons in the vicinity.
- 5.4 No person that owns, keeps or harbours any dog or other animal, or any number of dogs or other animals, shall permit such dog(s) or animal(s), to make or cause excessive or persistent noise, by cries, barking or other noises, which disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of the neighborhood, or of persons in the vicinity.
- 5.5 ~~Idling or continuous running of a diesel engine, a truck or bus for more than fifteen (15) minutes at the same location is prohibited, except, where the truck or bus is located within a garage or depot intended to be used for the long term parking of that vehicle.~~

6. Construction Hours

- 6.1 No person in the service area shall construct, erect, reconstruct, alter, repair or demolish any building, structure or thing or excavate or fill in land in any manner which disturbs the quiet, peace, rest, enjoyment, comfort or convenience of the neighbourhood or of persons in the vicinity outside of the following hours:

Day	Time
Monday – Saturday	7:00 am – 8:00 pm
Sundays and Statutory Holidays	10:00 am – 5:00 pm

- 6.2 No person in the service area shall, for profit or gain, on a Sunday, construct, erect, reconstruct, alter, repair or demolish any building, structure or thing or excavate or fill in land in any manner which disturbs the quiet, peace, rest,

enjoyment, comfort or convenience of the neighbourhood or of persons in the vicinity.

- 6.3 Where it is impossible or impractical to comply with this section, an application may be submitted for temporary exemption in accordance with section 9 herein. It is up to the person carrying on the work to make the application.

7. Exemptions

- 7.1 The following are exempt from the contents of this Bylaw:
- a) operation of an emergency vehicle while acting in the execution of their duties;
 - b) operating any motor vehicle, generator, machinery or other apparatus or thing during an emergency or for a public purpose or in furtherance of the public interest including, without limiting the generality of the foregoing, grass mowing, snow removal, water main and sewer main repairs and civil defence exercises;
 - c) performing works of an emergency nature for the preservation or protection of life, health or property, provided that the onus shall be on the *person* performing the work to show cause that the work was of an emergency nature;
 - d) lawfully carrying on a trade or industry at a commercial or industrial zoned area, provided that the sound or noise therefrom does not exceed the sound or noise common to such trade or industry when carried out in accordance with the generally accepted industry standards using equipment and facilities in good operating order;
 - e) carrying out farm operations conducted in accordance with normal farm practices under the *Farm Practices Protection (Right to Farm) Act*;
 - f) operating residential household equipment including, but not limited to, pool pump motors, air conditioning units, exhaust fans, hot tub pumps, provided that the sound or noise therefrom does not exceed the sound or noise generally common to such household equipment when in good operating order and being used in accordance with generally accepted standards;
 - g) performing regular highway maintenance, construction, re-construction and rehabilitation activities, authorized by the Ministry of Transportation and Infrastructure conducted by its employees, authorized representatives, agents, contractors and sub-contractors.
 - h) the operation of any motorized lawn-grooming or garden equipment between the hours of 7:00 am to 9:00 pm
 - i) activities permitted by temporary exemption pursuant to Section 9 of this Bylaw

8. Application for Exemption

- 8.1 On application for temporary exemption, an authorized person may deny or grant consent, in writing, to carry on works or a given activity for a specified term that allows for an exemption to the general regulations of this Bylaw.
- 8.2 Other than for emergency works the application mentioned in Subsection 9.1 shall be made in writing, and shall be submitted to the Regional District 14 days prior to the date of the proposed activity, and shall contain:
- a) The name, address, email address and telephone number of the applicant
 - b) the location and full description of proposed activity or development for which an exemption is being requested;
 - c) the building permit number, if applicable
 - d) a description of the source of sound for which an exemption is sought
 - e) a statement of the particular provision or provisions of the bylaw from which exemption is sought
 - f) the period of time; hours requested of duration not in excess of twenty-four hours, for which the exemption is sought
 - g) the reasons why the exemption should be granted
 - h) regardless of the requested exemption, a statement of the steps, if any, planned or presently being taken to, mitigate the noise for which the exemption must be provided
 - i) a non-refundable application fee in accordance with the Fees and Charges Bylaw
- 8.3 In any case where, because of an emergency or other unforeseen circumstance, an application for an exemption cannot be submitted within the time limit prescribed in this subsection, the Regional District may waive that limitation.
- 8.4 An applicant who has been denied a temporary exemption may apply to have the Regional District Board reconsider that decision in accordance with the following procedures:
- a) an application for reconsideration may be made within 30 days of the decision by notice in writing to the Regional District Board;
 - b) the applicant may address the Regional District Board in writing or in person concerning the request for reconsideration of the temporary exemption; and
 - c) the Regional District Board may deny the temporary exemption or may grant the temporary exemption with or without terms or conditions.

9. Penalty

9.1 Any person who violates any of the provisions of this Bylaw or who permits any act or thing to be done in contravention or in violation of any of the provisions of this Bylaw, or who neglects to do or refrains from doing anything required to be done by any provision of this bylaw commits an offence against this Bylaw and is subject to:

- a) upon summary conviction, a fine not exceeding \$10,000 and the costs of prosecution or imprisonment for not more than six (6) months or both;
- b) a penalty in accordance with the *Local Government Bylaw Notice Enforcement Act* and the RDOS Bylaw Notice Enforcement Bylaw if a bylaw notice is issued respecting the violation;

9.2 Each day a new violation of or failure to comply with any provisions of this Bylaw continues to exist shall constitute a separate offence.

9.3 Any penalty imposed pursuant to this Bylaw will be in addition to, and not in substitution for, any other penalty or remedy imposed pursuant to any other applicable statute, law or regulation.

10. Severability and Repeal

10.1 If any provision of this Bylaw is held to be invalid by a court of competent jurisdiction, the provision may be severed from this Bylaw and such invalidity shall not affect the validity of the remaining portions of this Bylaw.

10.2 The following Noise Control Bylaws and all amendments thereto are hereby repealed in their entirety:

- a) Electoral Area 'C' Noise Regulation and Prohibition Bylaw No. 2397, 2007
- b) Electoral Area 'D' Noise Regulation and Prohibition Bylaw No. 1527, 1994
- c) Electoral Area 'E' Noise Regulation and Prohibition Bylaw No. 2386, 2006
- d) Electoral Area 'F' Noise Regulation and Prohibition Bylaw 1526, 1994
- e) Electoral Area 'H' Noise Regulation and Prohibition Bylaw No. 2628, 2013

READ A FIRST, SECOND, AND THIRD TIME this _____ day of _____, 2021.

ADOPTED this _____ day of _____, 2021.

RDOS Board Chair

Corporate Officer

