

ADMINISTRATIVE REPORT



TO: Planning & Development Committee
FROM: B. Newell, Chief Administrative Officer
DATE: December 16, 2021
RE: Proposed Noise Regulation and Prohibition Bylaw No. 2931, 2021

Administrative Recommendation:

THAT the Regional District of Okanagan-Similkameen Noise Regulation and Prohibition Bylaw No. 2931, 2021, be updated by deleting the proposed regulation of commercial activities on a Sunday; and

THAT the Bylaw Notice Enforcement Amendment Bylaw No. 2507.14, 2021, be initiated; and

THAT the application fee for a “Temporary Exemption” from the regulations in the Noise Regulation and Prohibition Bylaw be set at \$100.00 in the Regional District’s 2022 Fees and Charges Bylaw.

Proposed Development:

To introduce a new Noise Regulation and Prohibition Bylaw No. 2931, 2021, for Electoral Areas “C”, “D”, “E”, “F”, “H” & “I”. This bylaw would replace the existing and separate noise control bylaws that are currently in place for these same electoral areas.

Background:

Under Section 324 (Noise Control) of the *Local Government Act*, the board may, by bylaw, “regulate or prohibit the making or causing of noises or sounds in or on a highway or elsewhere in the regional district.”

At present, the Regional District has adopted Noise Control Bylaws for Electoral Areas “C”, “D”, “E”, “F”, “H” & “I”.

These bylaws are generally consistent in terms of wording and layout with minor exceptions for the hours that construction works may be undertaken and the range of definitions in the Electoral Area “F” bylaw.

At its meeting of July 22, 2021, the Planning and Development (P&D) Committee of the Board considered an Administrative Report related to Bylaw No. 2931 and resolved that the bylaw be referred to the Electoral Area Advisory Planning Commissions (APC). The following is a summary of the APCs recommendations:

APC	Date	Recommendation
Area “C”	2021-08-17	[No quorum – item discussed informally]
Area “D”	2021-09-14	that the proposed construction hours be approved, subject to the following amendments: <ul style="list-style-type: none">no commercial activity of any kind on Sundays and Statutory holidays.

APC	Date	Recommendation
Area "E"	2021-08-09	that the proposed construction hours be approved, subject to the following amendments: <ul style="list-style-type: none"> that construction hours on Sundays and Statutory Holidays remain at the current allowed hours of 11:00 a.m. to 4:00 pm; and that no commercial activity take place on Sundays and Statutory Holidays.
Area "F"	2021-08-23	that the proposed construction hours be approved.
Area "H"	2021-08-17	that the proposed construction hours be approved, subject to the following amendments: <ul style="list-style-type: none"> to clarify the commercial clause so that it is easier to enforce.
Area "I"	2021-08-18	that the subject bylaw be approved.

Analysis:

There appears to be significant benefits to consolidating the existing noise control bylaws, including reducing duplication and overlap as well as improving consistency and interpretation across electoral areas.

Consolidating the bylaw also aligns with the Board’s Business Plan and “Key Success Driver” of “optimizing the customer experience ... by improving bylaws, policy and process within the organization.”

One aspect of this consolidation project has been a review of permitted construction hours. At present, these hours vary across electoral areas particularly with regard to when construction can occur on a Sunday or Statutory Holiday (see Attachment No. 1).

On this latter point, a concern was previously raised about construction occurring on a Sunday and if this should be eliminated. That type of restriction may be beyond the authority of a noise control bylaw.

Instead, the Board considered an option, common in some other local government noise control bylaws, to prohibit construction for “profit or gain” on Sundays. This was intended to allow homeowners to continue to undertake construction projects on their own homes. Enforcement of these provisions would continue to be through the submission of written complaints.

Further to the recommendations that have now been provided by the various Electoral Area APCs regarding the proposed construction hours, there are a number of options available to the Board in relation to Section 6 of the bylaw, including:

Option No. 1 – No Sunday Restrictions on Commercial Activities

- .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
<i>Monday – Saturday</i>	<i>7:00 am – 8:00 pm</i>
<i>Sundays and Statutory Holidays</i>	<i>10:00 am – 5:00 pm</i>

~~.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.~~

This may be the cleanest and most enforceable approach to an exemption for construction hours on a Sunday. The proposed Section 6.2 would not (and cannot) prohibit construction activities on a Sunday, and can only prohibit commercial activities from making noise that disturbs the peace of a neighbourhood (i.e. commercial activities would be acceptable on a Sunday under the bylaw if performed quietly).

This *may* create a significant enforcement challenge in attempting to determine the source of excessive noise on a Sunday (i.e. is it the result of actions by the home owner or their contractor?). The basis for restricting commercial activities on a particular day of the week is not a common practice amongst the member municipalities (see Attachment No. 1).

It is recognised that this option would not address the recommendation of some APCs to restrict commercial activities on Sundays and Statutory Holidays, but notes that some of the recommendations are beyond the authority of the bylaw.

Option No. 2 – No Sunday Restrictions on Commercial Activities / Status Quo Hours

.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
Electoral Area “C”, “D”, “H” & “I”	10:00 am – 5:00 pm
Electoral Area “E”	11:00 am – 4:00 pm
Electoral Area “F”	8:00 am – 10:00 pm

~~.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.~~

A variation of Option No. 1 (above), this proposal would not attempt to restrict commercial activities on a Sunday, but would maintain the current hours, by electoral area, for Sundays and Statutory Holidays.

It is recognised that this option would not address the recommendation of some APCs to implement consistent hours across electoral areas for Sundays and Statutory Holidays.

Option No. 3 – Sunday Restrictions on Commercial Activities

.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
<i>Monday – Saturday</i>	<i>7:00 am – 8:00 pm</i>
<i>Sundays and Statutory Holidays</i>	<i>10:00 am – 5:00 pm</i>

- .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.*

This option was previously considered by the Committee at its meeting of July 22, 2021, and includes the provision related to noise that may be generated by activities undertaken “for profit or gain”.

For the reasons outlined under Option No. 1), a prohibition on construction noise related to commercial activities is going to be difficult to enforce. This option can be modified to introduce the variable Sunday hours proposed under Option No. 2 (above).

In addition to the issue of construction hours, a number of other amendments could be pursued in support of the implementation of a new Noise Regulation and Prohibition Bylaw, including:

“Temporary Exemption” Assessment Criteria

A new Section 8.3 could be added to the bylaw in order to provide criteria against which an “authorized person” could consider an application for a “Temporary Exemption”.

This includes such considerations as the impracticality or risk of carrying out the proposed works within the time restrictions specified in this bylaw, seasonal considerations, length of exemption being sought and what, if any, measures are being implemented to reduce noise during the proposed exemption period.

Industrial Uses

All of the current noise control bylaws include a reference to gravel crushing and asphalt plants. To ensure that this provision is not lost in the transition to a new noise control bylaw, it is proposed to include a reference to “heavy industrial uses” under Section 5, with separate hours when excessive noise may not occur (e.g. between the hours of 8 pm and 7 am).

“Temporary Exemption” Application Fee

At present, each of the Electoral Area Noise Regulation and Prohibition Bylaw specifies that the fee for submitting an “Temporary Exemption” application fee is \$75.00. It is not proposed to carry this fee forward into Bylaw No. 2931 and that the cost of an application be specified in the Regional District’s Fees and Charges Bylaw.

Administration notes that the current fee of \$75.00 has not been reviewed since 2007, and that an increase to \$100.00 will more accurately reflect the costs to the Regional District of processing such a request.

Bylaw Notice Enforcement Bylaw Amendments

The proposed amendments to the Bylaw Notice Enforcement Bylaw are considered to be administrative in nature and are to ensure the proper section numbers in Bylaw No. 2931 are being cited in order to allow for the issuance of bylaw offence notices (i.e. tickets).

Alternatives:

1. THAT the Regional District of Okanagan-Similkameen Noise Regulation and Prohibition Bylaw No. 2931, 2021, and Bylaw Notice Enforcement Amendment Bylaw No. 2507.14, 2021, be abandoned.

Respectfully submitted:



C. Garrish, Planning Manager

Attachments:

No. 1 – Comparison of Current and Proposed Construction Hours (RDOS & Member Municipalities)

Attachment No. 1 – Comparison of Current and Proposed Construction Hours (RDOS & Member Municipalities)

Jurisdiction	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Stat Holidays
RDOS Bylaw 2931 (proposed)	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	10 am – 5 pm*	10 am – 5 pm
Areas “C”, “D”, “H” & “I”	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	10 am – 5 pm	10 am – 5 pm
Area “E”	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	11 am – 4 pm	11 am – 4 pm
Area “F”	6 am – 10 pm	6 am – 10 pm	6 am – 10 pm	6 am – 10 pm	6 am – 10 pm	6 am – 10 pm	6 am – 10 pm	8 am – 10 pm
Penticton	7 am – 10 pm	7 am – 10 pm	7 am – 10 pm	7 am – 10 pm	7 am – 10 pm	7 am – 10 pm	7 am – 10 pm	
Summerland	7 am – 10 pm	7 am – 10 pm	7 am – 10 pm	7 am – 10 pm	7 am – 10 pm	7 am – 10 pm	7 am – 10 pm*	
Oliver	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	8 am – 8 pm	
Osoyoos	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	8 am – 8 pm	
Princeton	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	7 am – 8 pm	8 am – 8 pm	Construction hours not specified*	
Keremeos	6 am – 10 pm	6 am – 10 pm	6 am – 10 pm	6 am – 10 pm	6 am – 10 pm	6 am – 10 pm	6 am – 10 pm	

* No commercial activity