

BYLAW NO. S-6.1

A BYLAW RESPECTING DISTURBANCE BY NOISE

The Council of the Village of Bath, Pursuant to paragraph 11(1)(L) of the Municipalities Act, R.S.N.B., Chapter M-22, as amended, enacts as follows:

SHORT TITLE

1. This bylaw shall be known as the Noise Bylaw.

PURPOSE

2. This Bylaw is enacted to protect, preserve and promote the safety, health, welfare, peace and quiet of the citizens of the Village of Bath through the reduction, control and prevention of loud and excessive noise, or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace or safety of reasonable persons of ordinary sensitivity.

DEFINITIONS

3. In this Bylaw:
 - (a) “contractor” means any person or persons whose services are engaged by the Village by means of a written contract to carry out some work or perform some action on behalf of the Village;
 - (b) “council” means the Mayor and Council of the Village of Bath;
 - (c) “noise” means sound of a volume or nature which causes or is likely to cause annoyance to or disturb any resident or residents, or which causes or is likely to cause a public disturbance, including but not limited to noise caused by shooting, singing, music, motor vehicles including motorcycles, motor bikes, off road vehicles, air horns, engine brakes, pneumatic hammers, construction equipment and machinery and animal noises;
 - (d) “off road vehicle” means any motor vehicle designed or adapted for off-road use and, without limiting the generality of the foregoing, includes an all terrain vehicle, but does not include any vehicle exempted from the application of the Off Road Vehicle Act by regulation;

- (e) ‘owner’ means the person or persons to whom a property is legally registered as evidenced by the documents on title available online through Service New Brunswick’s Internet Real Property Registry service (PLANET)
- (f) “peace officer” means
 - (i) a member of the Royal Canadian Mounted Police
 - (ii) a Police Officer appointed under section 10,11 or 17.3 of the Police Act;
- (g) “person” includes a corporation, partnership, association, society, club or firm;
- (h) “resident” means a landowner or tenant of property within the boundary of the village;
- (i) “village” means the Village of Bath

QUALIFICATIONS

- 4. (a) No person shall make, continue, maintain, permit or cause to be made or continued excessive unnecessary, unreasonable or unusually loud noise or any noise in such manner as to annoy, offend, disturb, injure or endanger the comfort, repose, health, peace or safety of any resident or residents;
 - (b) No person shall use, operate or permit the use or operation of any electronic device, radio, receiving set, television, musical instrument, phonograph or other machine or device for the producing or reporting of noise in such manner as to disturb the peace, quiet and comfort of any resident or residents;
 - (c) No person shall congregate because of, participate in or be in any party or gathering of people from which noise emanates of a volume so as to disturb the peace, quiet or repose of any resident or residents;
 - (d) For greater certainty, “noise” in paragraph (a), (b) and (c) means noise as defined in paragraph 3(c).
- 5. In addition to section 4, this bylaw shall also apply to noise caused by pneumatic hammers, construction equipment and machinery, and vehicles of business or trade between the hours of ten o’clock in the evening (10:00 p.m.) and seven o’clock in the morning (7:00 a.m.) daily.

SPECIAL CASE EXCEPTIONS

- 6. Without restricting the generality of sections 3 to 5, this bylaw shall not apply to:

- (a) contractors and/or employees of the village while in the reasonable course of their duties;
- (b) snow removal equipment, authorized emergency vehicles and emergency equipment;
- (c) the detonation of fireworks or explosive devices not used in construction, when so authorized by Council;
- (d) noises in connection with athletic and recreational activities when taking place on recognized sport fields and recreational facilities between the hours of nine o'clock in the evening (9:00 p.m.) and midnight (12:00 a.m.);
- (e) noises in connection with organized and scheduled traditional, festive and religious activities;
- (f) noises in connection with organized and scheduled activities and parades, street dances, and other community celebrations, when so authorized by Council.

APPLICATION FOR EXEMPTION

- 7. Notwithstanding any provision of this bylaw, any person may apply to Council to be granted an exemption from any provision of this bylaw for which that person might be prosecuted.
- 8. An application for exemption under this bylaw shall be in Form "A" attached to this bylaw.
- 9. An exemption of this bylaw may be considered by Council as it deems appropriate upon receiving an application for said exemption at least thirty (30) days prior to the start of the contemplated activity.
- 10. In deciding whether or not to grant an exemption, Council shall give consideration to the social or commercial benefit of the proposed activity to the Village, the view of any resident of the Village which may be expressed to Council, the proposed hours of operation of the proposed activity, the proposed duration of the activity and the level of noise anticipated to be generated by the activity.
- 11. An exemption granted by Council shall be in writing, shall include such terms and conditions as Council shall deem appropriate and shall specify the time period, not to exceed six (6) months, during which the exemption shall be effective.
- 12. In those cases where an exemption is granted, Council may revoke the exemption if it believes that a breach of the terms and conditions of the exemption has occurred.

13. Any alleged breach of the terms and conditions of an exemption granted by Council by the applicant shall be investigated by Village staff and reported to Council in writing. Council shall then determine whether or not a breach has occurred. Where council determines that a breach has occurred, it shall order the activity to cease within a maximum of five (5) days.

OFFENCE

14. Every person who violates any provision of this bylaw is guilty of an offence.
15. If a person continues to carry on any of the activities set out in sections 4 or 5 after directed by a Peace Officer, the Village Clerk or an officer appointed by council, to cease and desist, that person is guilty of a separate offence and a separate charge or charges may be laid until such times as the activity is stopped.

NOTICE

16. Notice of an offence committed under this bylaw shall be in the form of an Appearance Notice under the Provincial Offences Procedures Act (form 2) where the provisions of this bylaw are enforced by a peace officer. The peace officer shall inform the clerk of the Village of Bath of the issuance of this notice,
17. On the recommendation of the Village Clerk or an officer appointed by Council, the Council being satisfied that any provisions of this bylaw have been violated, the clerk shall issue a letter in the form of a notice of penalty delivered by regular mail to the person presumed to be liable for this notice.
18. Where ten (10) business days from the date of issue of a notice in Section 17, have elapsed without payment, and the fine has not been disputed by the person presumed to be liable for the notice, the fine shall be deemed to be confirmed, and becomes a debt due to the municipality. Where an additional ten (10) business days have elapsed after the fine has been confirmed without payment, the Village shall attach the fine to the water and sewer account of the property where the offence has been committed, and it shall be subject to any terms and conditions as established in Bylaws W 1.1 and any amendments, and W.2 and any amendments.
19. Where ten(10) business days from the date of issue of a notice under Section 17, has elapsed without payment and the person or persons presumed to be liable for the notice wishes to dispute the fine, via a written letter to the Village of Bath information with respect to violations of this bylaw may be laid in Provincial Court by the clerk or other persons as designated by council. Notice of an offence committed under this Bylaw under this section shall be in the form of an Appearance

Notice under the Provincial Offences Procedure Act (Form 2) and such notice shall be served on the person presumed to be liable of the offence.

LIABILITY

20. The owner of a property where an offence is committed under this Bylaw is liable for the offence, unless he establishes that the offence was committed by a person or persons unknown to him and without his knowledge or consent.
21. Where an offence under this Bylaw is committed on rented premises, the leaseholder shall then be held liable for the offence, unless he establishes that the offence was committed by a person or persons unknown to him and without his knowledge or consent.

PENALTY

22. Every person held liable for an offence under this Bylaw is liable to a minimum fine of two hundred and fifty dollars (\$250.00) and a maximum fine of one thousand and seventy dollars (\$1070.00).
23. Every person held liable for a first offence, shall be liable to the minimum fine as prescribed in Section 22; for a second offence, a sum equal to twice the minimum fine as prescribed in Section 22; and, for a third or subsequent offence, a sum equal to the maximum fine as prescribed in Section 22.

ENFORCEMENT

24. Any Peace Officer, the Village Clerk, or an officer appointed by Council is hereby authorized to take such action or issue such tickets that they may deem necessary to enforce the provisions of this Bylaw.
25. A person held liable for an offence under this bylaw other than failure to comply with a Judge's Order may, on or before the hearing scheduled for entering a plea before the Provincial Court and at the discretion of the Peace Officer, the Village Clerk, or officer appointed by Council, return a Plea of Guilty Form (Form 8) and pay the prescribed fine in cash, certified cheque, bank draft or money order, and upon such payment, the person committing the violation is not to be prosecuted or further prosecuted therefore for that offence.
26. If the voluntary payment set out in Section 25 has not been received before entering a plea before the Provincial Court, the person charged with the offence is liable on summary conviction to a fine of the sum of three times the minimum fine as

prescribed in Section 19, for a first offence, not less than the maximum fine as prescribed in Section 19 for a second or offence; and, not less than the maximum amount imposed for commission of an offence punishable under Part II of the provincial offences procedures act as a category D offence for a third and subsequent offence.

27. A fine may be paid:

(a) in person, during regular office hours, to the Village Clerk or other person(s) so designated by Council, at the Village Office.

(b) by mail addressed to the Village of Bath, 161 School Street, Bath, NB E7J 1C3.

SEVERABILITY

28. Every provision of this bylaw is independent of all other provisions and a determination of invalidity or unconstitutionally by a court of competent jurisdiction of one provision shall not affect the validity of the remaining provisions.

REPEAL OF BYLAW

29. Bylaw S.6 a Bylaw Respecting Disturbance by Noise given third reading on August 10, 2009 is hereby repealed.

READ FIRST TIME _____ **March 12, 2012**

READ SECOND TIME _____ **March 12, 2012**

READ THIRD TIME AND ENACTED _____ **April 10, 2012**

SIGNED: _____

MAYOR

CLERK

**APPLICATION FOR EXEMPTION UNDER THE NOISE BYLAW
(FORM "A")**

CONTACT INFORMATION

Name of Applicant : _____

Address: _____

Telephone: _____ (home) _____ (work)

**Name of group/organization/
Club/society(if applicable)** _____

ACTIVITY INFORMATION

Purpose of Activity: _____

Date(s) of Activity: _____

Time(s) of Activity: **from:** _____ **to:** _____

Location of Activity:
**Is there somewhere else
the activity could be held?** Y(list _____)/N

**Type of sound system
to be used (if applicable):** _____
**Will efforts be made to
Curb the noise level:** Y(describe) _____/N

**Have/will surrounding
Property owners be contacted
to apprise them of this
activity and to solicit their
approval?** _____

FOR INTERNAL USE

Police Comments if required:

Council decision:

NOTE: This application must be submitted to the Village Office a minimum of thirty (30) days prior to the proposed activity.