

VILLAGE OF BORDEN

NOISE BYLAW 06-2023

A Bylaw of the Village of Borden to prohibit certain activities creating noise and to abate the incidence of noise and to restrict the hours when certain sounds may be made.

The Council of the Village of Borden, in the Province of Saskatchewan enacts as follows;

1. Short Title

1.1 This Bylaw may be cited as the "*The Noise Bylaw*".

2. Purpose

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

3. Scope

3.1 This Bylaw applies to the control of all sound originating within the jurisdictional limits of the Village.

4. Definitions and Interpretation

4.1 In this Bylaw:

(a) "Approved Sound Meter" means a sound meter approved by Council by resolution;

(b) "Bylaw Enforcement Officer" means any person appointed by the Council to enforce the provisions of this bylaw;

(c) "Bylaw Notice" means a notice that is used to give notice that the bylaw has been contravened;

(d) "VILLAGE" means the Village of Borden in the Province of Saskatchewan;

(e) "Commercial District" means a commercial district as established by the Zoning Bylaw;

(f) "Council" means the Council of the Village of Borden;

- (g) "Dwelling" means a dwelling unit within the meaning of *The Zoning Bylaw*;
- (h) "Engine Brake" means a device commonly used in a Truck, Power Unit or Semi-Trailer unit to slow or brake the vehicle by closing the exhaust valves on the engine of the vehicle, or any similar device;
- (i) "Emergency" means works or activity of an urgent nature, undertaken for the preservation or protection of life, health or property;
- (j) "Emergency Vehicle" means a vehicle employed by police, firefighters, paramedics and or emergency medical technicians, an ambulance service or other first responders in the discharge of their duties;
- (k) "Emergency Work" means work made necessary to restore property to a safe condition following a public catastrophe, work to restore public utilities, roadways or public facilities, or work required to protect persons or property from an imminent exposure to danger;
- (l) "Holiday" means Sunday, any statutory holiday, and any day declared by resolution of Council to be a holiday;
- (m) "Industrial District" means an industrial district as established by the Zoning Bylaw;
- (n) "Motor Vehicle" means any vehicle propelled by power other than muscular power, including, but not being limited to a scooter, motorcycle, automobile, truck, snowmobile or Power Unit;
- (o) "Occupant" means a person who is the owner, occupant or lessee of the premises or any person found on the premises at or around the time when the noise or sound issues from the premises;
- (p) "Point of Reception" the point at which a sound level is measured by an Approved Sound Meter, located as close as is practicable to a height of 1.4 meters above ground level;
- (q) "Premises" shall mean the area contained within the boundaries of any lot and includes any building situated within such boundaries; provided, however, that where any building contains more than one dwelling unit each dwelling unit, or common area of such building and the land surrounding the building within the boundaries of the lot shall be deemed separate premises;
- (r) "Residential Building" means a building/structure used for the shelter or accommodation of persons;

(s) "Residential District" means a residential district as established by the Zoning Bylaw;

(t) "Quiet Hours" means any time of the day occurring:

(A) On any day after 11:00 pm;

(B) On any Weekday before 7:00 am; or

(C) On any Sunday or Holiday before 9:00 am;

(u) "Semi-Trailer" means a semi-trailer within the meaning of *The Traffic Safety Act*;

(v) "Special Event Permit" means a permit granted under subsection 8.4 hereof;

(w) "Signaling Device" means a horn, gong, bell, whistle, siren or other device producing an audible sound to draw people's attention to an approaching vehicle, including a bicycle;

(x) "Weekday" means any day other than a Holiday; and

(y) "Zoning Bylaw" means The Zoning Bylaw 05-2017 of the Village of Borden.

4.2 For the purposes of this bylaw, and without in any way limiting the generality of any provision contained herein, a person shall be deemed to:

(a) Cause a noise or an activity giving rise to a noise where that person is:

(i) An owner of a business where the noise, or the activity giving rise to the noise is associated with, arises from or is incidental to the carrying out of the business enterprise; and

(ii) The organizer of any event conducted with a view to a profit (whether or not a profit actually occurs) at which any person shall create a noise or undertake an activity giving rise to a noise incidental to or in furtherance of the hosting or operation of such event;

(b) Suffer and/or permit any noise to be caused, or any activity giving rise to a noise to be carried on, where that person is any or all of the following:

(i) A registered owner of the Premises upon which the noise originates;

(ii) A tenant of the Premises upon which the noise originates;

(iii) The employer and/or supervisor of any person creating a noise or undertaking an activity giving rise to a noise; or

- (iv) The organizer of any not-for-profit event at which any person shall create a noise or undertake an activity giving rise to a noise.

5. General Prohibition

5.1 Except as otherwise permitted under this bylaw, no person shall make, continue, or cause to be made or continued, or suffer or permit to be made or continued:

- (a) Any unreasonably loud or excessive noise;
- (b) Any noise which is likely to unreasonably annoy, disturb, injure, or endanger, or distract from, the comfort, repose, health, peace or safety of reasonable persons of ordinary sensitivity; and likely to unreasonably annoy, disturb, injure, or endanger, or distract from, the comfort, repose, health, peace or safety of reasonable persons of ordinary sensitivity, where those persons are located or may be located in Premises other than those from which the noise originates; or
- (c) Any noise which is so harsh, prolonged, unnatural or unusual so as to cause unreasonable discomfort to, unreasonably interfere with the peace and comfort of, or detrimentally or adversely affects Premises (and the people therein) other than those Premises from which the noise, including residences and/or places of business.

5.2 In determining whether a sound is unreasonably loud or excessive, considerations shall include, but are not limited to, the following:

- (a) The land use, nature and zoning of the Premises from which the sound emanates and the Premises where it is received or perceived;
- (b) The proximity of the sound to Premises used for sleeping, whether residential, commercial or industrial;
- (c) The time of day or night the sound occurs;
- (d) The duration of the sound;
- (e) The volume of the sound;
- (f) The nature of the sound;
- (g) Whether the sound is recurrent, intermittent or constant; and
- (h) The nature of the event or activity from which the sound emanates.

6. Specific Prohibitions

6.1 Specific Prohibitions Do Not Derogate: The following specific prohibitions do not in any way restrict or derogate from the General Prohibition contained in Section 5 hereof.

6.2 Domestic Noise: No person shall:

- (a) Operate, or suffer or permit to be operated, during Quiet Hours:
 - (i) A tractor, lawn mower, leaf blower, tiller, chain saw, mulcher, snow clearing device, or other similar yard or garden equipment, which is powered by an engine of any type;
 - (ii) A model aircraft, model vehicle, or other similar toy or recreational device driven by an internal combustion engine; and
 - (iii) Vehicle mounted: carpet cleaning, duct cleaning, or similar equipment.
- (b) Cause, allow, suffer or permit the sound of howling, wailing or barking of a dog or the caterwauling of a cat or the cry of an animal or bird, any of which can be heard by a person not on the same Premises from which such noise or sound emanates and which unreasonably disturbs or is likely to unreasonably disturb the quiet, peace, rest, enjoyment, comfort or convenience of any person affected or possibly affected thereby.
- (c) Cause, allow, suffer or permit or operate, play or allow to be played, any radio, record player, tape recorder, television set, musical instrument, speaker, stereo or any other apparatus, appliance, device, electronic or machine used for the promotion or amplification of sound, either in or on private or public property in such a manner that the same can be heard by persons who are not on the same Premises from which such noise or sound emanates, and which unreasonably disturbs or is likely to unreasonably disturb the quiet, peace, rest, enjoyment, comfort or convenience of any person affected or possibly affected thereby.

6.3 Construction Noise: Except in the case of an Emergency, no person shall carry on, or suffer or permit the construction, erection, demolition, alteration or repair of any building or structure which involves hammering, sawing, drilling or using any machine, tools or any other equipment; or to operate or allow to be operated a cement mixer, a cement mixer truck, a gravel crusher, a riveting machine, a trenching machine, a drag line, an air or steam compressor, a jackhammer or pneumatic drill, a tractor or bulldozer or any other tools, device or machine: so as to create a noise or sound which:

- (a) May be heard in any residence during Quiet Hours; or
- (b) Regardless of the time or day, unreasonably disturbs or is likely to unreasonably disturb the quiet, peace, rest, enjoyment, comfort or convenience of persons located in Premises other than that from which the noise emanates.

6.4 Advertising Noise: No person shall advertise any event or merchandise by ringing bells, blowing whistles, calling loudly, playing music, playing any musical instrument, playing or using any noise-making instrument, by the use of loudspeakers or other devices for the amplification of sound, or by any other audible means, on any street or other public place or in any building or Premises with the intention or result that the noise or sound therefrom shall be or is audible to persons using or frequenting any street or other public place or any other Premises. Notwithstanding the foregoing, and subject to the General Prohibition set out in section 5, a mobile vendor of food products may, outside of Quiet Hours, and while moving (and for a period of no longer than may be required to stop and service customers) play music or ring a hand bell to announce its arrival and/or proximity.

6.5 Vehicle Noise: No person shall:

- (a) Cause, suffer or permit:
 - (i) The idling of any Truck or Power Unit or the operation of any motor, refrigeration unit or similar device on a Semi-Trailer for more than twenty (20) minutes;
 - (ii) The use of an Engine Brake on any Motor Vehicle driven within the Village, except in case of an Emergency; or
- (b) The use of a signaling device except on an Emergency Vehicle; employed by those persons referenced in subsection 8.1(g); and
- (c) The use of an air horn on any Motor Vehicle within the Village, except in cases of Emergency.

6.6 Permitted Premises: Any unreasonably loud or excessive noise in a permitted premise or in a patio area which is part of the permitted premises which can be heard in a residential district and which unreasonably disturbs the peace, quiet and comfort of persons in the residential district.

7. Absolute Prohibitions

7.1 Notwithstanding (and without in any way restricting or derogating from any provision set out in section 5 or in section 6 hereof), no person shall:

- (a) Operate or suffer or permit the operation of a Motor Vehicle within the Village that is capable of or emits any exhaust or related sound exceeding 92 dBA at a location 50 centimeters from the exhaust outlet thereof while the engine is at any speed greater than idle;
- (b) Carry on or suffer or permit any other person to carry on any activity giving rise to noise at a level which exceeds any of the following:

- (i) 88 dBA at a Point of Reception located at or within one meter outside the boundary of the Premises from which the noise emanates;
- (ii) 85 dBA at a Point of Reception located at or within one meter outside the boundary of, or anywhere within a Premises upon which is located a school, church, library or residence;
- (iii) 70 dBA at a Point of Reception located at or within one meter outside the boundary of, or anywhere within a Premises upon which is located a residence where the noise is measured during Quiet Hours.

8. Exemptions

8.1 General Exemptions: The provisions of this bylaw shall not apply to:

- (a) The ringing of bells in churches, religious establishments and schools;
- (b) The moderate use of musical instruments to call attention to an opportunity to contribute to a collection made for a charitable undertaking;
- (c) The playing of musical instruments, the sounding of a steam whistle, the sounding of horns or the use of sound amplification equipment for any parade authorized by Council;
- (d) The moderate playing of musical instruments appropriate to any religious street service;
- (e) The sounding of a general or a particular alarm or warning to announce a fire or other emergency or disaster;
- (f) The sounding of a factory whistle and similar devices at normal appropriate times;
- (g) Emergency Vehicles, police, firefighters, paramedics, emergency medical technicians, ambulance attendants and other first responders (while acting as such) and equipment and other vehicles used by any of the foregoing in the discharge of their duties (including training exercises);
- (h) Work carried on by the Village or its agents, contractors, servants or employees, acting within the scope of their agency, contract, or employment, as the case may be;
- (i) Sound emanating from any public work owned or operated by the Village;
- (j) The use of any equipment for the repair or maintenance of any public utilities including, but not being limited to the public utilities operated by, Loraas Disposal, Saskatchewan Power Corporation, Saskatchewan Energy Corporation and Saskatchewan Telecommunications;

8.2 Emergencies: If not otherwise the subject of an exemption under this bylaw, a person performing works or activities intended to prevent, control limit or otherwise relieve from an Emergency shall be exempted from the provisions of this bylaw, provided that any such person shall demonstrate that the work for such a purpose, and the noise created thereby was reasonable, having regard to all the circumstances.

8.3 Special Event Permits:

- (a) Any person may apply to the Village for an exemption from any provision of this bylaw with respect to any noise to allow such person to emit, cause or permit such noise for the period of time set out in such application.
- (b) Every person applying for an exemption shall, at least 45 days prior to the date for which the exemption is sought (or in the case of an application for several days, the first such date), provide to the Village a complete and accurate application attached as Schedule "A", setting out full particulars of exemption requested.
- (c) Upon receipt of an application, the Village shall evaluate the application having due regard to the following criteria:
 - (i) The prohibitions set forth in this bylaw, and the degree to which any noise may cause noise which would be otherwise prohibited hereunder, and the nature of the noise likely to be associated with the activity or event;
 - (A) The nature of the activity or event, including but not being limited to:
 - (B) Whether the activity or event is for the benefit of the public or in the public interest;
 - (C) Whether the activity or event is related to a significant event for the applicant or the applicant's family such as a wedding, or significant anniversary;
 - (D) The date or dates of the activity or event and the associated day of the week; and
 - (E) The times of operation;
 - (ii) The general noise mitigation measures proposed by the applicant;
 - (iii) The efforts made by the applicant to inform residents and businesses likely to be affected by the noise of the application, and to obtain and accommodate their questions and concerns prior to the submission of the application;
 - (iv) The arrangements proposed by the applicant to monitor noise during the event and to mitigate noise and its effects during the event and activity;

- (v) The number of previous exemptions granted to the applicant; and
- (vi) Whether any previous exemptions granted to the applicant, or granted in relation to the proposed location, activity or event have given rise to complication or negative outcomes.

(d) Where the Village is of the opinion that:

- (i) It is not reasonable or appropriate to grant the application, the Village shall deny the application;
- (ii) It is reasonable or appropriate to grant part but not all of an application, or to impose conditions upon a permit, the Village may grant that portion of the application which he or she considers to be appropriate;
- (iii) It is appropriate and reasonable to grant the application; the Village shall grant the application;
- (iv) The matter is one which is more appropriately dealt with by Council; refer the matter to the next Council meeting for a determination together with a report summarizing the evaluation. Council shall thereafter, with due regard to the criteria set forth in subsection 8.3, deny the exemption, or grant the exemption in whole or in part.

(e) The Village or Council, as the case may be, may impose terms and conditions upon any exemption.

(f) The grant or denial of a permit, and the imposition of terms and conditions by Village or by Council, is wholly discretionary and is not subject to review or appeal.

(g) Where an exemption is granted, the Village shall issue a Special Event Permit setting forth the details and the terms and conditions of the exemption, in such form as the Administrator shall adopt from time to time.

(h) Where an exemption is granted, the Special Event Permit shall render any and all provisions of this Bylaw referenced therein inapplicable and shall, except where the penult is rendered null and void, exempt all person or persons organizing and attending the special event from prosecution under this Bylaw for breach of the specified provisions.

(i) The breach of any terms or conditions imposed on any exemption granted, and referenced in the Special Event Permit shall render the exemption null and void.

8.4 Duty to Mitigate Upon Direction: Where a person or an activity is otherwise exempt from the provisions of this bylaw:

(a) A Bylaw Enforcement Officer may nevertheless direct any such person or person in

charge of any such activity to take such reasonable steps as the Bylaw Enforcement Officer may specify (either verbally or in writing) to abate or eliminate noise; and

(b) Any such person or person in charge of such activity shall comply with the direction given by the Bylaw Enforcement Officer within a reasonable time, having due regard to all the circumstances.

9. Evidentiary Matters

9.1 Sound levels shall be measured by way of an Approved Sound Meter and the testimony of a Bylaw Enforcement Officer respecting the location at which sound levels were measured, and the sound levels observed and recorded on an Approved Sound Meter, shall constitute *prima facie* proof of those matters;

9.2 Regardless of the availability of or absence of other evidence, or by way of corroboration of other evidence, a justice, judge or court may infer from the evidence of a Bylaw Enforcement Officer relating to a noise and/or the conduct of persons, including, but not being limited to evidence concerning the factors referenced in subsection 5.2 hereof that a noise is:

(a) Unreasonably loud or excessive;

(b) Likely to unreasonably annoy, disturb, injure, or endanger, or distract from, the comfort, repose, health, peace or safety of reasonable persons of ordinary sensitivity; and likely to unreasonably annoy, disturb, injure, or endanger, or distract from, the comfort, repose, health, peace or safety of reasonable persons of ordinary sensitivity, where those persons are located or may be located in Premises other than those from which the noise originates.

(c) So harsh, prolonged, unnatural or unusual so as to cause unreasonable discomfort to, unreasonably interfere with the peace and comfort of, or detrimentally or adversely affect Premises (and persons located therein) other than that from which the noise originates, including residences and/or places of business.

10. Offences and Prosecution

10.1 Every person who contravenes any provision of this Bylaw is guilty of an offence and is liable on summary conviction to:

(a) In the case of an individual, to a fine:

(i) For a first offence not less than \$100.00 and not to exceed \$250.00;

(ii) For a second offence, not less than \$250.00 and not to exceed \$500.00; and

(iii) For a third and subsequent offence, not less than \$500.00 and not to exceed \$5,000.00, and in the case of a continuing offence, to a further fine of not more

than \$5,000.00 for each day during which the offence continues.

(b) In the case of corporation, to a fine:

- (i) For a first offence not less than \$250.00 and not to exceed \$500.00;
- (ii) For a second offence, not less than 500.00 and not to exceed \$1,000.00; and
- (iii) For a third and subsequent offence, not less than \$1,000.00 and not to exceed \$10,000.00, and in the case of a continuing offence, to a further fine of not more than \$10,000.00 for each day during which the offence continues.

(c) In default of payment of a fine imposed hereunder, an individual convicted may be imprisoned for a term not to exceed one year.

10.2 Notwithstanding subsection 10.1 above, in the case of a person who contravenes this bylaw for a first time, a Bylaw Enforcement Officer may issue a notice of violation to that person.

10.3 Where a notice of violation is issued, that notice shall provide that if the person pays the Village the sum:

- (a) In the case of an individual, the sum of \$100.00; and
- (b) In the case of a corporation, the sum of \$250.00; within 14 business days of the date of the notice of violation, the person shall not be prosecuted for the contravention.

10.4 A voluntary payment pursuant to subsection 10.3 may be paid in person, during regular office hours at the office of the Village, or by mail addressed to the Village of Borden, Box 210, Borden SK S0K 0N0.

10.5 Notwithstanding subsection 10.3 if, in the opinion of the Bylaw Enforcement Officer, it is in the public interest to compel a person who has contravened this Bylaw for the first time to appear in court, the Bylaw Enforcement Officer may issue a summons requiring such appearance without giving the alternative of paying the specified amount to avoid prosecution.

11. Schedule Forms Part of Bylaw

11.1 Schedule "A" attached hereto forms part of this Bylaw.

12. Severability

12.1 A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any provision of this Bylaw shall not affect the validity of the remaining parts of this Bylaw.

13. Repeal

13.1 Bylaw No. 2-1989 and all amendments thereto are repealed effective on the coming into force of this Bylaw.

14. Bylaw Comes into Force

14.1 This bylaw comes shall come into force upon third reading.

INTRODUCED AND READ A FIRST TIME THIS 23rd day of May , 2023

READ A SECOND TIME THIS 13th day of June , 2023

READ A THIRD TIME AND PASSED THIS 13th day of June, 2023

MAYOR

ADMINISTRATOR

SEAL

Schedule "A"
VILLAGE OF BORDEN
NOISE BYLAW 06-2023
SPECIAL EVENT PERMIT APPLICATION

The undersigned hereby requests the Village of Borden to consider this application for an exemption from certain provisions contained within the Noise Bylaw.

The undersigned certifies the information contained herein, on which this application is based, to be true and the owner is aware of this exemption request.

1. Applicant:

(a) Name of Applicant: _____

(b) Address: _____

(c) Mobile Phone: _____

(d) Email: _____

2. Date (s) for which an exemption is being sought: _____

3. Civic Address for Event: _____

4. Name of Owner of Premises: _____

5. Type of Event: _____

6. Anticipated Event Attendance: _____

(a) Expected Number: _____

(b) Estimated Age Range: _____

(e) Expected Percentage of Local Attendees: _____

7. Description of noise anticipated and the source(s) of the noise:

(Add pages to application if required)

8. Time of Day noise anticipated: _____

9. Alcohol to be Served: _____

(a) Yes: _____ If yes: hours of service: _____

(b) No: _____

10. Steps to be taken to mitigate or control noise:

(Add pages to application if required)

11. Security Arrangements: _____

12. Person in charge during event: _____

(a) Name: _____

(b) Mobile Phone Number: _____

(c) Email: _____

13. The names, addresses and phone numbers of nearby residents and businesses which may be affected, and a summary of their questions and comments shall be attached to this Application Form

Signature of Applicant: _____

Date: _____

Applications must be received at least 30 days prior to the proposed date of the event.

**For Use by VILLAGE OF
BORDEN**

Denied: _____

Approved: _____

Approved with Conditions: _____

Conditions: _____