

FILE: 4020-01

DATE: September 29, 2020

TO: Chair and Directors
Electoral Areas Services Committee

FROM: Russell Dyson
Chief Administrative Officer

RE: **Noise Bylaw Amendment**

Supported by Russell Dyson
Chief Administrative Officer

R. Dyson

Purpose

To amend the existing Comox Valley Regional District (CVRD) Noise Bylaw No. 102; specifically to regulate complaints of noise deemed excessive and originating from industrial properties and to regulate the effect of that noise on residential premises in the immediate area.

Recommendation from the Chief Administrative Officer

THAT the Board consider giving readings to Bylaw No. 626 being the “Electoral Areas Noise Control Regulation Bylaw No. 102, 2010, Amendment No. 1” as attached to the staff report dated September 29, 2020.

AND FURTHER THAT the Board consider giving readings to Bylaw No. 627 being “Municipal Ticket Information Bylaw No. 104, 2010” Amendment No. 18” to reflect the changes outlined in the staff report dated September 29, 2020.

Executive Summary

In 2018, bylaw staff began a review of the current CVRD noise bylaw as it relates to noise complaints regarding properties zoned for industrial use and that “use” generates noise that is bothersome to surrounding residential neighbours. In 2019, a bylaw review, study of best practices from other regional districts (RD) and a legal review was undertaken. Several noise bylaw amendment proposals were noted including:

- The CVRD’s existing noise bylaw was last updated in 2010;
- Noise complaints make up approximately 20 per cent of all bylaw files;
- The majority of noise complaints are from commercial or industrial activities; and
- The current noise bylaw uses hours of operation for enforcement measures.

On March 2, 2020, the Board directed staff to further review changes to the noise regulation bylaw, in relation to commercial and industrial properties and the use of decibel (dB) readings to help mitigate noise complaints. A legal review of the current bylaw with those amendments is included in the draft bylaw attached as Appendix A.

Prepared by:

M. Dinesen

Michael Dinesen
Bylaw Enforcement Officer

Concurrence:

A. Yasinski

Amanda Yasinski
Manager of Bylaw
Compliance

Concurrence:

S. Smith

Scott Smith
General Manager of
Planning and Development
Services

Background/Current Situation

The CVRD noise bylaw does not have specific requirements for industrial zoned property to keep noise within a certain threshold dB or to take any measures to reduce their operating noise levels when adjacent to/or audible at residential properties when operating within reasonable hours.

A sound's loudness is measured in dB. CVRD bylaw staff would utilize sound detectors in a subjective manner, only as a guide and not solely for use in the issuance of municipal ticket informations (MTIs). A review of other RD noise bylaws for dB levels, capturing dB levels locally by bylaw staff in random locations and additional legal review was conducted. Proposed amendments to the existing bylaw wording includes:

- Interpretation
"Industrial use" means any of the following uses as defined in the Rural Comox Valley Zoning Bylaw, No. 520, 2019: Light industrial use; Industrial equipment, sales and service; Automobile wrecking yard; Water and beverage bottling; Heavy industrial use; Log handling and storage facility; Processing of sand and gravel; Industrial equipment maintenance and repair; Storage and sale of aggregate material and products; Boat building and repairs and service and sales; Seafood processing; Barge facility; Waterfront freight handling facility; Storage and works yard and warehousing; Bulk storage; Craft beverage processing; Domestic industrial use; General contractor services and storage yard; Manufacturing; Sawmill; Scrap salvage yard; Warehousing; Wood processing; and similar activities.
- **"Point of Reception"** means the place where a meter is located to measure the decibels from a source of noises or sounds.
- **"Residential Premises"** means land upon which is located a building or structure, including a mobile home used seasonally or permanently for human occupancy zoned under Part 700, Residential Zones or on which a single detached dwelling or residential use is a permitted principal or accessory use pursuant to the Rural Comox Valley Zoning Bylaw, No. 520, 2019.
- Industrial Noises
 In addition to the prohibitions imposed, no person shall commit, cause or permit the commission of an act on real property used for industrial purposes which results in the emission of a noise that is:
 - (1) in excess of 65 decibels;
 - (2) audible at a point of reception on a separate legal parcel containing residential premises; and
 - (3) from 9:00 pm to 8:00 am

The benefit of the amendments to the bylaw is that it keeps the existing bylaw intact as much as possible and adds regulations regarding time and dB level from industrially used properties when measured from a point of reception on a separate residentially zoned parcel. At this time, staff is not recommending that the CVRD apply Db levels to commercially zoned properties due to the broad application of commercial zones in the CVRD. Staff will continue to use the existing application of the noise bylaw to gain compliance on commercially zoned properties and would apply the Db levels to any industrial uses that may be the cause of a noise complaint.

Should Bylaw No. 102 be amended to incorporate these changes the Municipal Ticket Information Bylaw No. 104, 2010 will need to be amended as well to include a ticket provision around the requirement of dB levels to not be in excess of 65 decibels on property being used for industrial purposes. The fine amount is proposed to be set at \$500 which is in line with the other ticketable offences in the CVRD's noise bylaw.

Options

1. To make changes to CVRD Bylaw No. 102 to allow for dB readings as a step in the investigative process in regards to industrial properties only; or
2. To not change the existing noise control bylaw.

Staff recommends option 1.

Financial Factors

The cost to administer the Noise Control Extended Service, is \$58,692 and is contained in the 2020 budget. The requisition for this service is based on a rate of \$0.0055 per \$1,000 of assessed value, which results in a cost of \$2.75 for a property assessed at \$500,000.

The 2020 budget includes \$2,500 to complete the legal review and update of the noise control bylaw and service. In 2019 the costs for the preliminary legal review were \$1,643.

Legal Factors

The ability to enforce noise regulations against inherently noisy businesses and industries, where these land uses are expressly permitted under the zoning is challenging. A recent decision of the BC Supreme Court (2018 BCSC 2014), upheld by the BC Court of Appeal (2019 BCCA 271), Chase Discount Auto Sales Ltd. v. Waugh, confirms that local governments may further regulate and constrain how a business operates, even where the use of land is permitted.

Regional Growth Strategy Implications

Changes to the bylaw will ensure that procedures and objectives are in line with the Regional Growth Strategy (RGS). Specifically, public health and safety supporting a high quality of life through the protection and enhancement of community health, safety and well-being.

Intergovernmental Factors

The CVRD's bylaw staff have a close working relationship with the Comox Valley RCMP. Amendments to the noise bylaw will be communicated to the RCMP as they periodically assist by writing noise violation tickets during after-hours complaints.

Interdepartmental Involvement

There are no specific interdepartmental considerations.

Citizen/Public Relations

Bylaw staff often attend industrial properties following complaints to ensure that the use is appropriate. If a use is in an appropriate zone, the application of the noise bylaw is limited in only applying it if the noise is specifically named in the noise bylaw (CVRD Bylaw No. 102, Schedule ‘A’, Sec 8). Staff will use these amendments to the bylaw to assist in achieving compliance through the use of regulations regarding time and dB level.

Attachments:

Appendix A – “Draft Comox Valley Regional District (CVRD) Noise Bylaw No. 102– Lidstone & Company”

Appendix A

COMOX VALLEY REGIONAL DISTRICT

BYLAW NO. 102

A bylaw to regulate or prohibit objectionable noise

WHEREAS the Comox Valley Regional District has the authority to establish a general service for noise control under section 724 of the *Local Government Act*;

AND WHEREAS Bylaw No. 2275 being “Noise Control Extended Service Conversion Bylaw No. 2275, 2000”, adopted on the 30th day of October 2000, converted the function of noise control to an extended service of the regional district;

AND WHEREAS the Comox Valley Regional District board believes that

- (a) it is desirable to regulate or prohibit certain sounds that are objectionable or liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public; and
- (b) it is not the intent of the board to prevent or prohibit those sounds customarily emitted or usually associated with the normal conduct or reasonable daily activity at reasonable times;

NOW THEREFORE the Board of the Comox Valley Regional District in open meeting assembled enacts as follows:

Title

- 1. This Bylaw No. 102 may be cited as the “Electoral Areas Noise Control Regulations Bylaw No. 102, 2010”.

Interpretation

- 2. In this bylaw, unless the context otherwise requires:
 - “Board” means the Board of the Comox Valley Regional District.
 - “Bylaw Compliance Officer” means a person appointed by the Board as a bylaw compliance officer and includes a peace officer.

"Industrial use" [means any of the following uses as defined in the Rural Comox Valley Zoning Bylaw, No. 520, 2019: Light industrial use; Industrial equipment, sales and service; Automobile wrecking yard; Water and beverage bottling; Heavy industrial use; Log handling and storage facility; Processing of sand and gravel; Industrial equipment maintenance and repair; Storage and sale of aggregate material and products; Boat building and repairs and service and sales; Seafood processing; Barge facility; Waterfront freight handling facility; Storage and works yard and warehousing; Bulk storage; Craft beverage processing; Domestic industrial use; General contractor services and storage yard; Manufacturing; Sawmill; Scrap salvage yard; Warehousing; Wood processing; and similar activities.](#)

~~“Regional District” means the Comox Valley Regional District.~~

“Motor vehicle” includes an automobile, motorcycle and any other vehicles

propelled or driven other than by muscular power, but does not include the cars of electric or steam railways or other motor vehicles running only upon rails, or traction engine, farm tractor or self-propelled implement of husbandry.

“Persistent” Means means continuous noise or sound lasting more than 5 minutes or erratically occurring for a cumulative duration of 5 minutes or longer in any 15 minute period.

"Point of Reception" Means means the place where a meter is located to measure the decibels from a source of noises or sounds.

"Real Property" means land other than a highway, together with all improvements which have been so affixed to the land as to make them in law a part of the land and includes land without improvements.

~~“Real Property” means land other than a highway, together with all improvements which have been so affixed to the land as to make them in law a part of the land and includes land without improvements.~~

“Regional District” means the Comox Valley Regional District.

“Residential Premises” means land zoned under Part 700, Residential Zones or on which a single detached dwelling or residential use is a permitted principal or accessory use pursuant to the Rural Comox Valley Zoning Bylaw, No. 520, 2019.

Jurisdiction

3. This bylaw is applicable to and enforceable within Electoral Areas A, B and C.

Objectionable and Disturbing Noises

4. The acts listed in schedule “A” to this bylaw are considered by the Board to cause noises or sounds which are objectionable or liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public in the neighbourhood or vicinity of those acts.

Prohibition by Time or Place

5. No person shall commit, cause or permit the commission of an act listed in schedule “A” to this bylaw which results in the emission of a persistent noise which is audible at a residential premises or in a public place in the vicinity during the period of time specified in respect of that act in schedule “A”.

Exceptions

6. The prohibitions contained in section 5 of this bylaw do not apply to the emission of sound in connection with an act listed in schedule “B” to this bylaw.

~~**Commercial and Industrial Noises**~~

- 7. In addition to the prohibitions imposed under section 4 and section 5 of this bylaw, no person shall commit, cause or permit the commission of an act on real property used for ~~commercial or industrial purposes~~use, which results in the emission of a noise that is:
 - (1) in excess of 65 decibels;
 - (2) audible at a point of reception on a separate legal parcel containing residential premises;
 - (3) from 9:00 pm to 8:00 am

Inspection and Entry

- 8. A bylaw compliance officer is hereby authorized to enter, at all reasonable times, on any property subject to the regulations or direction of the Board, to ascertain whether the regulations or directions of this bylaw are being observed.

Enforcement

- 9. The enforcement of the provisions within this bylaw occurs in accordance with the Comox Valley Regional District enforcement policy.

Penalty

- 10. (1) Any person who contravenes a provision in this bylaw, or who suffers or permits any act or thing to be done in contravention of this bylaw, or who refuses, omits, or neglects to fulfill, observe, carry out or perform any duty or obligation imposed in this bylaw is guilty of an offence and:
 - (a) on summary conviction is liable to a fine of not less than \$500 and not more than \$10,000; or
 - (b) on conviction of a ticket offence under the ticketing bylaw, is liable for the fine imposed under that bylaw.
- (2) In the case of a continuing violation, each day that a violation continues to occur shall constitute a separate offence.

Severability

- 11. In any provision of this bylaw is held to be beyond the power of the CVRD or otherwise invalid by any court of competent jurisdiction, then the provision may be severed from the bylaw without affecting the validity of the remainder of the bylaw.

Repeal

- 12. Bylaw No. 2356 being “Noise Control Regulation Bylaw No. 2356, 2001” and all amendments thereto are hereby repealed.

Read a first and second time this 30th day of March 2010.

Read a third time this 30th day of March 2010.

Adopted this 27th day of April 2010.

G. T. Phelps

D. Oakman

Appendix A

Chair

D/Corporate Legislative Officer

I hereby certify the foregoing to be a true and correct copy of Bylaw No. 102 being “Electoral Areas Noise Control Regulations Bylaw No. 102, 2010” as adopted by the board of the Comox Valley Regional District on the 27th day of April 2010.

D. Oakman

D/Corporate Legislative Officer

**Schedule ‘A’
Prohibitions of Time**

Type	Section	Actions	Times Prohibited
Electronic Devices	1.	If the level of noise disturbs, then the operation of an electronic device or group of connected electronic devices incorporating one or more loudspeakers or other electro-mechanical transducers and designed for the production, reproduction or amplification of sound, including but not limited to radios, record players, tape decks, compact disc players, televisions, receivers, audio/video tape players and musical instruments.	At all times
Auditory Signalling Device	2.	The operation of an auditory signalling device, including but not limited to the ringing of bells or gongs and the blowing of horns or sirens or whistles, or the production, reproduction or amplification or any similar sounds by electronic means except where required or authorized by law.	9:00 pm to 8:00 am
Persistent Sound	3.	If the level of noise disturbs, then persistent barking, calling, whining or other similar persistent sound made by a domestic animal kept or used for a purpose other than agriculture.	At all times
	4.	If the level of noise disturbs, then persistent yelling, shouting or hooting.	At all times
Motor Vehicles	5.	The operation of a motor vehicle including but not limited to all terrain vehicles and motor cycles, other than on a highway or other place intended for its operation.	9:00 pm to 8:00 am
Mechanical Devices	6.	The operation of a mechanical device, including but not limited to power saws and compressors, power lawn mowers both gas and electric powered.	9:00 pm to 8:00 am
	7.	The operation of sawmills whether portable or permanent, where permitted.	9:00 pm to 8:00 am
	8.	Any type of manufacturing, processing, assembling, fabricating, testing, servicing and repairing where permitted.	9:00 pm to 8:00 am

**Schedule ‘B’
Exceptions**

Type	Section	Exemptions for sounds emitted in connection with the following:
Emergency Measures	1.	Emergency measures undertaken for the immediate health, safety or welfare of any person or persons, or for the preservation or restoration of property unless the sound is of a longer duration or of a nature more disturbing than is reasonably necessary for the accomplishment of such emergency purpose.
Works or Activity	2.	There are exemptions for sounds emitted between 7:00 am and 9:00 pm on any day except Sunday, and on Sunday between 9:00 am and 9:00 pm for works or activities associated with and necessarily incidental to: (a) constructing, erecting, reconstructing, altering, repairing or demolishing of buildings, structures or things; and (b) excavating, grading or filling land, rock drilling and blasting.
	3.	There are exemptions for sounds emitted between 7:00 am and 9:00 pm on any day for works or activities associated with and necessarily incidental to: (a) installing, altering, repairing or removing public facilities or utilities; (b) well drilling; or (c) logging or forest related activities.
Activities	4.	Traditional, religious or other activities listed below: fireworks under permit; special events held under the “Comox Valley Regional District Special Events Bylaw No. 2155, 1999”; church bells, call to prayers and other like noises; (d) dances, concerts, fairs and other events held until midnight at community halls or other public venues which the public is invited to attend but which are not large enough to require a special event permit, whether or not tickets are required. This exception does not extend to any private parties or events other than weddings which occur on private property; (e) law enforcement activities at the Courtenay and District Fish and Game Protective Association facilities for law enforcement training purposes under permit, as per schedule ‘C’ of this bylaw, as authorized by the manager of bylaw compliance and special investigations or designate.
Shouting	5.	Shouting in relation to games played in a community park or school grounds.
Mechanical Motorized	6.	Operation of mechanical or motorized equipment for the purpose of cutting grass on a golf course or for agricultural purposes.
	7.	Logging or other forestry activities undertaken in periods of high risk for forest fires and which are mandated by enactment to be carried out during specific times.

Schedule ‘C’

Permit to authorize law enforcement activities at the Courtenay and District Fish and Game Protective Association facilities for law enforcement training purposes

Noise Permit Application

The following is an application for a permit to allow for night training exercises, for a single law enforcement agency, at the Courtenay and District Fish and Game Protective Association (CDFGPA) facilities located at 3786 Colake Road, near Courtenay, B.C. This permit application only applies to the Electoral Areas Noise Control Regulations Bylaw No. 102, 2010.

CDFGPA official making this application:

Name: _____ .
Title _____ . Phone Number: _____ .
Signature: _____ . Date: _____ .

Stipulations:

- 1) Permit application fee is \$10.00
2) All noise that is liable to disturb the quiet, peace, enjoyment, comfort, or convenience of individuals or the public in the neighbourhood or vicinity, must conclude before 11:00 pm on the dates requested.
3) All night training exercises that produce the above noise must conclude before the Friday of the long weekend in May of any year.
4) The applicant must provide notification in the following manners, and provide evidence of said notification, prior to the issuance of the permit:
a. To the Comox Valley detachment of the RCMP in writing;
b. To the Village of Cumberland in writing; and
c. To the public by way of advertising in at least two (2) consecutive issues of a local, widely read newspaper.
5) The Comox Valley Regional District may refuse the issuance of this permit if conditions within the permit have not been met or there is satisfactory evidence that the conditions will not be met.

Event Information:

Agency utilizing the Courtenay and District Fish and Game Protective Association facilities:

Brief description of event including approximate number of attendees:

Dates of Event:

Start Time:

End Time:

1) _____

Appendix A

2) _____