

TOWN OF HAMPTON

BY-LAW # 183-08 including amendment #199-12 adopted July 2012

A BY-LAW RESPECTING DISTURBANCE BY NOISE

The Council of the Town of Hampton, under the authority vested in it by paragraph 11(1)(l) of the *Municipalities Act*, R.S.N.B. 1973, c. M-22 as amended, enacts as follows:

Short Title

1. This by-law shall be known as the Noise By-law.

Purpose

2. This by-law is enacted to protect, preserve and promote the safety, health, welfare, peace and quiet of the citizens of the Town of Hampton 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 by-law:
 - (a) “contractor” means any person or persons whose services are engaged by the Town by means of a written contract to carry out some work or perform some action on behalf of the Town;
 - (b) “Council” means the Mayor and Council of the Town of Hampton;
 - (c) “noise” means any noise or 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 shouting, 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, a dirt bike, a dune buggy, a motorized snow vehicle or an amphibious 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 Town;
- (i) “Town” means the Town of Hampton.

Qualification

- 4.
 - (a) No person shall make or permit to be made any noise within the Town between the hours of twelve midnight (12:00 a.m.) and seven o’clock in the morning (7:00 a.m.).
 - (b) For greater certainty, “noise” in paragraph (a) means noise as defined in paragraph 3(c).
 - (c) At any time, no person shall permit noise to continue where the noise has generated a complaint that resulted in a warning issued by a Peace Officer. Examples of such offending noise include the unrestrained barking or howling of dog or a failure to control sound emitted from a vehicle, including off-road vehicles, or other items described in sections 3(c) and 3(d) or such other electronic or mechanical equipment with the limits of the Town of Hampton.
- 5. In addition to section 4, this by-law shall also apply to noise caused by pneumatic hammers, construction equipment and machinery, and vehicles of business or trade between the hours of nine o’clock in the evening (9:00 p.m.) and seven o’clock in the morning (7:00 a.m.) daily, as well as seven o’clock in the morning (7:00 a.m.) and nine o’clock in the evening (9:00 p.m.) on a Sunday.

Special case exceptions

6. Without restricting the generality of sections 3 to 5, this by-law shall not apply to:
 - (a) contractors and/or employees of the Town 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 sports 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 by-law, any person may apply to Council to be granted an exemption from any provision of this by-law for which that person might be prosecuted.
8. An application for exemption under this by-law shall be in Form "A" attached to this by-law.
9. An exemption of this by-law 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 town, the views of any resident of the Town 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 Town 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. Any person who violates a provision of this by-law commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category D 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 to cease and desist, that person is guilty of a separate offence and a separate charge or charges may be laid until such time as the activity is stopped.

Penalty

16. A person held liable for an offence under this by-law is liable to a minimum fine of one hundred and forty dollars (\$140.00) and a maximum fine of one thousand and seventy dollars (\$1,070.00) plus a twenty per cent surcharge payable under the *Victims Services Act*, and in default of payment thereof to prosecution in accordance with the provisions of the *Provincial Offences Procedure Act*.

Liability

17. The owner of a property where an offence is committed under this by-law 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.
18. Where an offence under this by-law is committed on rented premises, the owner of the property where the offence is committed shall furnish within seven (7) days a copy of the lease on the property, and on failure to do so shall be guilty of an offence. 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.

- 18.1 Evidence to support an offence under this by-law shall include the evidence of at least one complainant, and/or the peace officer responsible for its enforcement.

Notice

19. Notice of an offence committed under this by-law 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 for the offence.

Enforcement

20. This by-law shall be enforced by a Peace Officer in accordance with the provisions of the *Provincial Offences Procedure Act*.
21. A person held liable for an offence under this by-law 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, 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 therefor.
22. A fine may be paid:
- (a) in person, during regular office hours, to the Town Clerk or other person(s) so designated by Council, at Town Hall;
 - (b) by mail addressed to the Office of the Town Clerk, 27 Centennial Road, P.O. Box 1066, Hampton, New Brunswick, E5N 8H1.

Severability

23. Every provision of this by-law is independent of all other provisions and a determination of invalidity or unconstitutionality by a court of competent jurisdiction of one provision shall not affect the validity of the remaining provisions.

Repeal of By-law

24. By-law # 108-91, the Village of Hampton By-law Respecting Disturbance by Noise, is repealed.

Read First Time: August 12, 2008

Read Second Time: August 12, 2008

Read Third Time and Enacted: September 9, 2009

Amendment:

Read First Time: June 12, 2012

Read Second Time: June 12, 2012

Read Third Time and Enacted: July 10, 2012

Ken Chorley, Mayor

Megan O'Brien Harrison, Clerk

**APPLICATION FOR EXEMPTION UNDER THE NOISE BY-LAW
(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
she 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:

Council decision:

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