

By-law 689-2008

**A BY-LAW TO REGULATE AND CONTROL NOISE
IN THE VILLAGE OF LUMBY**

Whereas, pursuant to the *Community Charter*, Council may, by by-law, regulate, prohibit, and impose requirements in relation to the protection and enhancement of the well-being of the Village in relation to those noise and vibrations that is liable to disturb the quiet, peace, rest, enjoyment, comfort, or convenience of individuals or the public.

The Council of The Corporation of the Village of Lumby, in open meeting assembled, enacts as follows:

- A. This By-law may be cited for all purposes as "Anti-Noise By-law Number 689-2008".
- B. By-law Number 674-2006 is hereby repealed.

1. **DEFINITIONS AND INTERPRETATION:**

- (a) Where a word is used in this by-law, but is not defined specifically or by context, it shall be interpreted by reference to the *Motor Vehicle Act* and the *Community Charter*.
- (b) In this By-law, unless the context otherwise requires:

“Commercial Motor Vehicle” means any motor vehicle having a gross vehicle weight in excess of five thousand five hundred kilograms (5,500 kg) or a length in excess of 7.5 metres, but does not include buses, emergency medical service vehicles, fire apparatus, police, or vehicles owned by or operated for the Village of Lumby;

“Council” means the Council of the Village of Lumby;

“Highway” includes all public streets, roads, ways, trails, lanes and sidewalks;

“Inspector” means the official appointed by Council resolution for the purpose of enforcing and carrying out the provisions of this by-law;

“Idle” means the operation of the engine of a commercial motor vehicle while the commercial motor vehicle is not in motion, and “idling” shall have a corresponding meaning;

“Mobile Public Address System” means a public address system that can be used or is used while mounted on a motor vehicle, trailer or such other device transported by human motor power;

“Municipality” means The Corporation of the Village of Lumby;

“**Peace Officer**” shall have the same meaning as in the *Interpretation Act*, being Chapter 206 of the Revised Statutes of British Columbia 1979, plus the person or persons who are appointed to enforce and administer the by-law;

“**Person**” includes any individual, firm, company, association, society, corporation, group, or municipality;

“**Property**” means real property and includes lands, other than a highway, together with all improvements which have been so affixed to the land as to make them in fact and in law a part thereof;

“**Public Address System**” means a sound amplification system, either by megaphone or electronically, used outdoors to disseminate the spoken word and/or music to the public in general, and includes outdoor sound amplification systems used for purposes of a performance, concert, exhibition or entertainment, but does not include systems used for internal communications in schools and businesses;

“**Village**” means the Corporation of the Village of Lumby;

- (c) If a division, section, subsection, sentence, clause, or phrase of this by-law is for any reason held to be invalid by the decision of a court of competent jurisdiction, it shall be severed and such decision shall not affect the validity of the remaining portions of this by law.

2. GENERAL PROHIBITIONS:

- (a) No person shall make or cause, or permit to be made or caused, any noise in or on a public or private place which is liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public in the neighborhood or vicinity of that place. Failure to comply may result in a fine in accordance with section 10 of this by-law, and such fines for property zoned commercial and industrial may be greater than fines for property zoned residential.
- (b) No person being the owner, occupier or tenant of real property shall allow or permit such real property to be used so that noise or sound which occurs thereon or emanates therefrom is liable to disturb disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public in the neighborhood or vicinity of that property. Failure to comply may result in a fine in accordance with section 10 of this by-law, and such fines for property zoned commercial and industrial may be greater than fines for property zoned residential.

3. SPECIFIC PROHIBITIONS:

Without limiting the generality of section 2 herein:

- (a) No person shall play, and no person being the owner, occupier or tenant of real property shall allow the operation of any radio, stereophonic equipment or other instrument or any apparatus for the production or amplification of sound either in or on private premises or in any public place in such a manner as to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public in the neighborhood or vicinity of those premises or place.
- (b) No person shall own, keep or harbor any animal or bird which by its cries disturbs the peace, quiet, rest or tranquility of individuals or the public in the surrounding neighborhood or vicinity.
- (c) No person shall operate a motor vehicle on a highway in the municipality in a manner which disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public in the neighborhood or vicinity of that highway.
- (d) No person shall operate in the municipality any motorized lawn-grooming or garden equipment between the hours of 10:00 p.m. and 7:00 a.m.
- (e) Subject to section 6, no person shall, construct, erect, reconstruct, alter, repair or demolish any building, structure or thing, or excavate or fill in land, or operate equipment or machinery in any manner which disturbs the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public in the neighborhood or vicinity, during the hours of 10:00 p.m. and 7:00 a.m.
- (f) Subject to section 6, no owner of real property shall, allow a person to construct, erect, reconstruct, alter, repair or demolish any building, structure or thing, or excavate or fill in land or operate equipment or machinery in any manner which disturbs the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public in the neighborhood or vicinity during the hours between 10:00 p.m. and 7:00 a.m.
- (g) No person in the Municipality shall operate a mobile public address system in the Municipality without a Permit issued in accordance with s. 5 of this By-law.
- (h) Failure to comply with subsections 3(a) to 3(g) may result in a fine in accordance with section 10 of this by-law, and such fines for property zoned commercial and industrial may be greater than fines for property zoned residential.

4. EXEMPTIONS:

Notwithstanding anything contained herein, no person shall be guilty of an infraction of this By-law while:

- (a) operating or being in charge of Fire Department, Police or Ambulance vehicles while in the execution of their duties;

- (b) operating any motor vehicle, machinery or other apparatus, person or thing while in use or carrying out matters in an emergency nature or matters in the public interest and, without limiting the generality of the foregoing, including snow removal, water main and sewer main break repairs and Civic Defense exercises, but the onus shall be on the person to show cause that the action was of an emergent nature; or
- (c) operating any vehicle, conveyance, machinery, equipment or device in use for agricultural purposes, or keeping, owning or harboring any animal or bird on a farm as defined in the *Assessment Act*, on lands zoned A1 and A2;
- (d) making improvements to lands during hours permitted by this by-law, and provided that all equipment that has an internal combustion engine has an exhaust muffler that complies with the *Motor Vehicle Act* Regulations, as well as a maximum allowable sound pressure level of 88 DBA for gasoline-driven engines, and 93 DBA for diesel-driven engines;
- (e) operating a Village of Lumby street cleaning service or Village of Lumby snow removal service.

5. SPECIAL EXEMPTIONS:

(a) Construction Permits:

Where it is impossible or impractical to comply with sections 3(f) and 3(g), and if the Inspector finds that it is necessary that the work be carried on between the hours of 10:00 p.m. and 7:00 a.m., the Inspector may, on application in writing, give written approval to carry on the work that is found to be necessary, and may designate specific hours and days on which the work may be carried on.

(b) Mobile Public Address Systems:

(i) Upon application in writing, the Inspector may grant a permit for the use of a mobile public address system, provided such system is used as follows:

- (A) the sound emitted there from does not exceed 83 DBA;
- (B) the system is used only between the hours of 9:00 a.m. and 6:00 p.m.;
- (C) the system is not parked while in use on a highway; and
- (D) the system is not used on any residential highway which has on either side of same an area zoned residential, more than once per day.

(ii) All Permits for non-commercial purposes shall be for a stipulated period of days;

- (iii) No fee shall be payable for non-commercial Permits; and
- (iv) A Permit fee of \$50.00 per day shall be payable for commercial Permits.

6. COMMERCIAL AND INDUSTRIAL TEMPORARY NOISE PERMITS:

- (a) A person who operates a business, which is duly licensed to operate within the Village and which violates section 2 or 3 of this By-law must apply to the Council for a permit to create noise which is necessarily incidental to the business activity of such person. No such business may operate or continue to operate without said permit.
- (b) The applicant for a permit shall file with the Clerk of the Village an application duly completed and signed, in the form prescribed by Schedule "B" to this By-Law, and the Clerk shall place such application form before Council as soon as is reasonably possible.
- (c) The Council shall, at its sole discretion, determine if a permit shall be issued based on the information identified in Schedule "B" and any other information received from the applicant or other individuals or the public, including, but not limited to, the following:
 - (i) the nature and source of the sound;
 - (ii) the necessity for the sound;
 - (iii) the proposed hours of the sound and the reason the sounds cannot be confined to the hours of 7:00 a.m. to 10:00 p.m; and
 - (iv) the degree to which the sound is liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public.
- (d) The permit shall be valid for the time period specified in the permit, which shall not be in excess of twelve (12) months, and may contain such terms or conditions as the Council sees fit.
- (e) If the Council declines to issue a permit, Council must advise the applicant of the grounds for refusal.
- (f) A permit issued by the Council may be revoked by the Council or the Inspector if the information supplied by the applicant to Council was untrue or inaccurate, or if the applicant fails to comply with the terms or conditions of the permit. Within seven (7) days of revoking a permit, the Council or the Inspector shall make reasonable attempts to provide the permit-holder with written notice that the permit has been revoked.
- (g) If a permit revoked, a person may be liable for a contravention of this By-law, in accordance with section 10 herein.

7. **RIGHT OF ENTRY:**

- (a) An Inspector may enter any lands, building, structure or premises at any reasonable time for the purpose of ascertaining that the terms of this By-law is being observed.

8. **REPEAT NOISE SERVICE CALLS:**

- (a) Where a member of the RCMP, a By-law Enforcement Officer, Inspector or other Village official is required to respond to a property for:
 - (i) more than one noise service call within a twenty-four (24) hour period; or
 - (ii) more than three noise service calls within a twelve (12) month period;

the owner of the real property shall be liable to pay an excessive noise abatement fee in accordance with the amounts prescribed in Schedule "A" of this By-law for each additional noise service call responded to.

- (b) Where legal title to a property is transferred, noise service calls made before the date that the new owner obtains legal title to the real property shall not apply to the new owner of the property;
- (c) Before imposing an excessive noise abatement fee, written notice shall first be provided to the owner of the real property;
 - (i) describing in reasonable detail the nature of the noise conduct, activity or condition that occurred, or was maintained or permitted in, on or near the property; and
 - (ii) advising the owner in writing by registered mail that excessive noise abatement fees will be imposed for each additional noise service call to the same property.
- (d) Service shall be effective on an individual if the individual is served personally or if the notice is mailed by prepaid registered mail to the address of the owner shown on the current year's property assessment roll for the property for which the notice is issued;
- (e) Service shall be effective on a corporation if the notice is served personally on a director, officer or manager of the corporation or is left at or mailed by prepaid registered mail to the registered office of the corporation.
- (f) An owner may, within 30 days of receipt of an invoice demanding payment of excessive noise abatement fees, require that Council reconsider the requirement to pay, or the amount of, the excessive noise abatement fees, at which time the owner of the real property shall have an opportunity to be heard by Council.

9. **IDLING RESTRICTIONS:**

- (a) No person shall cause or permit a commercial motor vehicle to idle in a residential area for more than three (3) consecutive minutes. Failure to complete may result in a fine of One Hundred Dollars (\$100).
- (b) This s. 9 does not apply to:
 - (i) Buses, fire apparatus, police, or emergency medical service vehicles while engaged in operational activities, including training and patient transfer activities;
 - (ii) Commercial motor vehicles participating in an emergency activity;
 - (iii) Commercial motor vehicles that remain motionless because of an emergency, traffic conditions (including congestion and signals), weather conditions, or mechanical difficulties over which the driver has not control;
 - (iv) Commercial motor vehicles where idling is required as part of the repair process or to prepare the vehicle for service;
 - (v) Armored vehicles where a person remains inside the vehicle while guarding the contents of the vehicle or while the vehicle is being loaded or unloaded;
 - (vi) Commercial motor vehicles engaged in a parade or race or any other such event authorized by Council; or
 - (vii) Mobile workshops.

10. **PENALTY SECTION:**

- (a) Every person who violates any provision of this By-law, and who permits any act or thing to be done in contravention of this By-law, or who fails to do any act or thing required by this By-law, shall be deemed to have committed an offence against this By-law and
 - (i) shall be liable to a fine set out in the Village of Lumby Municipal Ticketing By-law; or
 - (ii) shall be liable, upon summary conviction, to the penalties provided under the *Offence Act*.
- (b) Any penalty imposed pursuant to this By-law shall be in addition to and not in substitution for, any other penalty or remedy imposed pursuant to any other applicable statute law or legislation.

(c) Each day of an offence shall be considered a new offence and finable as such.

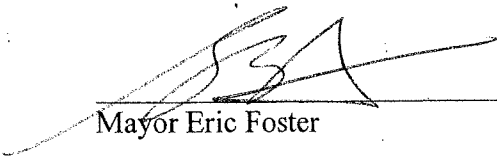
This Law shall come into effect as of the date of adoption:

READ A FIRST TIME this 3rd day of November, 2008

READ A SECOND TIME this 3rd day of November, 2008

READ A THIRD TIME this 3rd day of November, 2008

RECONSIDERED AND ADOPTED this 17th day of November, 2008



Mayor Eric Foster



Clerk

SCHEDULE A

EXCESSIVE NOISE ABATEMENT FEES

1. Attendance at property by RCMP or Village of Lumby bylaw enforcement - \$150.00/call

SCHEDULE B
APPLICATION FOR NOISE PERMIT

Name _____ Bus. Name _____

Mailing Address _____

Postal Code _____

Bus. Phone No. _____ Emerg. contact. No. _____ Fax No. _____

Emergency Contact Information _____

Location For Permit Desired _____

Permit for Temporary Permanent

If Temporary: Start Date _____ End Date _____

Describe Source of Noise:

Check one of the following:

Noise will be Continuous Intermittent Occasional

Time which Noise may occur: _____

Why noise must occur outside hours of 7:00 a.m. to 10:00 p.m.:

Reason For Permit. _____

Describe the noise abatement measures the applicant will take when causing the noise:

What is Located On Adjacent Property? _____

Will Someone Be On site At All Times ? Yes No

Signature: _____ Date: _____