

## NUISANCE BY-LAW

### BY-LAW # 750-12

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The Council of the Town of Sussex, under authority vested in it by Section 11 (1) (L) of the Municipalities Act of the Province of New Brunswick, RSNB, c.M-22, enacts as follows:

#### 1. TITLE

- (i) This by-law may be cited as “Nuisance By-Law”.
- (ii) The provisions of this by-law apply to the entire area within the Town limits of the Town of Sussex.

#### 2. DEFINITIONS

In this by-law:

- (i) “Building Inspector” means the Building Inspector of the Town of Sussex;
- (ii) “By-Law Enforcement Officer” means a person appointed by Council to enforce the regulation of this by-law;
- (iii) “Community Services Director” means the Community Services Director of the Town of Sussex;
- (iv) “Council” means the Mayor and Councillors of the Town of Sussex;
- (v) “dBB(A)” means the sound pressure measured in decibels using the “A” weighted scale of a sound level meter.
- (vi) “decibel” means a unit for expressing the relative intensity of sounds on a scale from zero for the average least perceptible sound to approximately 130 for the average pain level.

- (vii) “dwelling” means:
  - (a) the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence and includes an apartment and a motel or hotel room,
  - (b) a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence;
- (viii) “group” means three or more persons;
- (ix) “place of worship” is a specially designed structure or consecrated space where individuals or a group of people such as a congregation come to perform acts of devotion, veneration, or religious study.
- (x) “motor vehicle” means every vehicle that is self-propelled and includes a motorcycle, motor-driven cycle and snowmobile;
- (xi) “noise” means any sound that is reasonably likely to disturb the peace of others.
- (xii) “Police Officer” means:
  - (a). a member of the Royal Canadian Mounted Police,
  - (b). a police officer appointed under Section 10, 11 or 17.3 of the Police Act,
  - (c). an auxiliary police officer or an auxiliary police constable, appointed under Section 13 of the Police Act, when accompanied by or under the supervision of a member of the Royal Canadian Mounted Police;
- (xiii) “public address system” means any system of loud speakers, amplifiers, microphones or reproducers or any combination of any such equipment used in the reproduction or amplification of music, speech or other sounds when used for communication or otherwise addressing or entertaining a person or persons;

- (xiv) "Town" means the Town of Sussex; and
- (xv) "Town Clerk" means the Town Clerk of the Town of Sussex.
- (xvi) "Ambient Sound Level" means the Sound Level measured by a Tester at a Point of Reception, which excludes the noise generated by an activity with respect to which a complaint about noise has been made;
- (xvii) "Continuous Sound" means any Sound Level that occurs;
  - (a). For a continuous duration of more than 3 minutes; or
  - (b). Sporadically for a total of more than three (3) minutes, in any continuous fifteen (15) minute period.
- (xviii) "Non-continuous Sound" means any Sound Level that is not a Continuous Sound measured by a Sound Level Meter.
- (xix) "Point of Reception" means any location at the place of work or residence where the noise or Sound Levels are heard by a complainant, as determined by the Tester to be appropriate in each circumstance;
- (xx) "Residential Development" means any land which is the site of a Residential Building and is designated as one of the following Land Uses as defined under the Town of Sussex Zoning By-law.
  - (a). R1, R2, R3, R4 and GB
  - (b). Any other Land Designation which allows residential uses.
- (xxi) "Residential Building" means a structure that contains one or more dwelling units including a house. Multi-family dwelling, housing project, apartment building, lodging house, dormitory, senior's citizen complex or hospital.

(xxii) “Commercial Development” means any land which is the site of any development other than a Residential Building or lands designated as one of the following Land Uses as define under the Town of Sussex Zoning By-law.

(a). INST, F, P, A, IL, IM, CBD, SMC, and HC.

(b). Any other Land Designation which allows commercial uses.

(xxiii) “Outdoor Speaker System” means any sound amplification device that converts electrical impulse into sound, whether the devise is independent or incorporated into a radio, stereo, television, public address or other system, which is used for general listening purposes and positioned:

(a). Outside a building;

(b). Inside a building and within two (2) meters of any opening in the building including a window or doorway, where it is directed outside of the building; or

(c). In a tent.

(xxiv)

(xxv) “sound level meter” means a device used to measure sound pressure which meets the National Standards Institute SI.4-1983 (R2006), or the International Electro-Technical Council Standard No. 123 or the British Standard No. 3539 Part 1., or the USA Standard SI.4-1961.

(xxvi) “Leq” means the equivalent continuous Sound Level over periods of time as specified in this By-law at a specified location as measured by a Sound Level Meter.

(xxvii) “Weekday” means Monday through Friday, inclusive unless it falls on a holiday, as defined in the Days of Rest Act (S.N.B. 1985, c. D-4.2).

(xxviii) “Weekend” means Saturday and Sunday and any other holiday, as defined in the Days of Rest Act (S.N.B. 1985, c. D-4.2).

(xxix) 'Day-time" means the period:

- (a). Beginning at 0700 Hours and ending at 2200 Hours of the same day on Weekdays; or
- (b). Beginning at 0900 Hours and ending at 2200 Hours of the same day on a Weekend.

(xxx) "Night –time" means any period beginning at 2200 Hours and ending the following day at:

- (a). 0700 Hours if the following day is a Weekday; or
- (b). 0900 Hours if the following day is a Weekend.

(xxxix) "tester" means an Officer or individual authorized by the Town of Sussex and is trained in the operation of a Sound Level Meter as defined in this By-law.

### 3. GENERAL PROVISIONS

Within the Town no person during the times set forth herein shall emit or cause or permit the emission of sound or sounds resulting from an act which is likely to cause a nuisance or otherwise disturb the peace and tranquility of the inhabitants of the Town such as:

- (i) the unnecessary revving of a motor vehicle engine at any time;
- (ii) the running of a motor vehicle engine except for a short warm up or cool down period and such period shall not exceed one-half ( $\frac{1}{2}$ ) hour in duration;
- (iii) the blowing of a motor vehicle horn, at anytime, except when required or authorized by law or in accordance with good safety practices;
- (iv) the screeching or squealing of tires of any motor vehicle, at anytime;

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- (v) the operation of any combustion engine or pneumatic device without an effective exhaust or intake muffling device in good working order and in constant operation, at anytime;
- (vi) the operation of any item of construction equipment without an effective muffling device in good working order and in constant operation, at any time;
- (vii) the operation of domestic outdoor power tools, with the exception of domestic snow-blowers or snow-throwers, between 2200 hours and 0700 hours;
- (viii) the operation of construction equipment between 2200 hours and 0700 hours save and exempt the operation of construction equipment for the installation of municipal services;
- (ix) the operation of a public address system for the purpose of advertising or for gain or otherwise within 190 metres of any public hospital at anytime or during school hours within 95 metres of any school;
- (x) the carrying out of any works in connection with the construction, reconstruction, alteration or repairing of any building or structure or of any excavation or excavation works with any mechanical device without permission, in writing, from the Building Inspector, between 2200 hours and 0700 hours; and
- (xi) the operation or permitting the operation of racing competitions between motorcycles or motor vehicles anywhere within the Town shall not be permitted.

**4. PUBLIC DISTURBANCE**

- (i) No person shall use or permit a radio, television, phonograph, piano or other musical instrument or public address system to be used with such degree in loudness so as to disturb the peace and comfort of the neighborhood or any person in any dwelling, apartment house or other type of dwelling.

- (ii) No person shall coast, slide or skate on a skateboard or scooter, engage in in-line skating or use any other such device on a sidewalk in the Town of Sussex.
- (iii) No person shall stand or sit in a group on a street or sidewalk within the Town in a manner as to impede or obstruct vehicular or pedestrian traffic.
- (iv) No person shall make or cause, or permit to be made or caused, any noise which disturbs or tends to disturb the quiet, peace, rest, enjoyment comfort, or convenience of persons in the vicinity.
- (v) No person shall own or harbor any animal or bird which, by its frequent calls, cries, barks, or other noise whatsoever, disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of persons in the vicinity.
- (vi) Except as otherwise herein provided, No owner or occupier of real property shall allow such real property to be used so that noise which emanates there from, disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort, or convenience of persons in the neighborhood or vicinity of the real property between the hours of 2200 and 0700 Monday through Friday and between the hours of 0100 and 0700 Saturday and Sunday.

**5. CONTINUOUS SOUND IN RESIDENTIAL DEVELOPMENTS**

- (i) No person shall cause or permit to be caused a Continuous Sound that exceeds the greater of the following Sound Levels:
  - (a). 65 decibels (dBA) Leq measured over a one (1) hour period during the Day-time; or
  - (b). 50 decibels (dBA) Leq measured over a one (1) hour period during the Night-time;at any Point of Reception within a Residential Development.

- (ii) Notwithstanding Subsection (i), where the Ambient Sound Level for an area is at or above the maximum allowable Day-time or Night-time Sound Levels referred to in Subsection (i), measured over a one (1) hour period, a Sound Level must exceed 5 decibels (dBA) Leq over the Ambient Sound Level before it becomes an offence.

**6. CONTINUOUS SOUND IN COMMERCIAL DEVELOPMENTS**

- (i) No person shall cause or permit to be caused a Continuous Sound that exceeds the greater of the following Sound Levels:
  - (a). 75 decibels (dBA) Leq measured over a one (1) hour period during the Day-time; or
  - (b). 60 decibels (dBA) Leq measured over a one (1) hour period during the Night-time;

at any Point of Reception within a Commercial Development.

- (ii) Notwithstanding Subsection (i), where the Ambient Sound Level for an area is at or above the maximum allowable Day-time or Night-time Sound Levels referred to in Subsection (i), measured over a one (1) hour period, a Sound Level must exceed 5 decibels (dBA) Leq over the Ambient Sound Level before it becomes an offence.

**7. NON - CONTINUOUS SOUND IN ANY DEVELOPMENT**

- (i) No person shall cause or permit to be caused a Non-Continuous Sound that exceeds:
  - (a). 85 decibels (dBA) Leq measured over a fifteen (15) minute period during the Day-time; or
  - (b). 75 decibels (dBA) Leq measured over a fifteen (15) minute period during the Night-time;

at any Point of Reception within Any Development.



8. **OUTDOOR SPEAKER SYSTEMS**

- (i) No person shall operate an Outdoor Speaker System on a parcel of land where a property line of the parcel is within 150 meters of a Residential Development parcel during the period beginning at 2000 hours and Ending at 0800 hours the following Day.
- (ii) Notwithstanding Subsection (i), and Outdoor Speaker System must comply with the Sound Levels established in this By-law.

9. **EXEMPTIONS**

The provisions of this by-law shall not apply to:

- (i) agents, servants or employees of the Town who are engaged in the reasonable execution of their duties in doing work which may be described as essential or emergency in nature carried out at the request of the Town;
- (ii) noises in connection with athletic or recreational activities in municipal park areas, arenas, community centres, carnivals or circuses when authorized by the Community Services Director;
- (iii) the emission of sound in places of worship.
- (iv) the emission of sound in connection with any organized traditional, festive or religious activity celebrating:
  - (a). Canada Day;
  - (b). New Year's Eve;
  - (c). religious holidays; or
  - (d). Remembrance Day;
- (v) the emission of sound in connection with calls to worship, ringing of bells at places of religious worship, or services of religious worship;

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- (vi) noises in relation to parades, street dances and other community activities authorized by the Council or the Community Services Director; and
- (vii) noises caused by motor vehicles or equipment being used for emergency purposes.
- (viii) Any persons, association, organization, corporation, activities, events that has obtained approval for an Exemption authorized by Council so long as that person or party is acting within the terms and conditions of such approval.
- (ix) Pneumatic hammers, construction equipment and machinery, vehicles of business and trade between the hours of 0700 to 2100, Monday through Friday and between the hours of 0900 to 1700 Saturday and Sunday.

**10. APPLICATION FOR EXEMPTION**

- (i) 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.
- (ii) An application for exemption under this by-law shall be submitted in a form set out in Schedule "A" hereto attached to this by-law.
- (iii) 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 event or activity.
- (iv) 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.
- (v) 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 during which the exemption shall be effective.

- (vi) Any alleged breach of the terms and conditions of an exemption granted by Council, by the applicant, shall be investigated by the By-law enforcement officer and reported to Council in writing. Council may revoke any exemption if Council believes that a breach of the terms and conditions of the exemption has occurred.

11. **PENALTIES**

- (i) A Police Officer or By-law Enforcement Officer is hereby authorized to enter on any property at all reasonable times for the purpose of ascertaining whether the regulations of this by-law are being observed.
- (ii) Every person who violates any provision of this by-law is guilty of an offence and is liable to a fine of not less than Two Hundred and Fifty Dollars (\$250.00) and not more than One Thousand and Seventy Dollars (\$1,070.00).
- (iii) Unless otherwise provided in this by-law, a Police Officer or the Town Clerk may, either before or after the institution of proceedings against a person in respect of an offence under this By-law, accept from the person alleged to have been guilty of the offence, the payment of:
  - a. For a first offence, a sum equal to the minimum penalty prescribed for such violation.
  - b. For the second offence a sum equal to twice the minimum penalty prescribed for such violation; and,
  - c. For a third or subsequent offense, a sum equal to the maximum penalty prescribed for such violations.
- (iv) The person so accepting payment under this section shall forward such payment to the Treasurer, together with a copy of the receipt delivered pursuant to subsection 7 (iii) hereof or other record setting forth the information required to be shown on the receipt;

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- (v) A payment under subsection 7 (iv) hereof shall constitute a full satisfaction release and discharge of all penalties incurred by such a person for such violation and for the purses hereof shall have the same effect as if a judge had duly convicted the person of the violation for which the amount was paid and a certificate purporting to be signed by the Treasurer to the effect that the sum has been paid in respect to a specific violation shall be prima facie evidence in all Courts of the conviction.
  
- (vi) If the voluntary payment set out in section 7 (iii) above has not been received on or before the date a charge pertaining to the offence has been laid before the Provincial Court, the person charged with the offence is, in accordance with the provisions of the Provincial Offences Procedures Act, liable on summary conviction to a fine not less than Two Hundred and Fifty (\$250.00) and not more than One Thousand and Seventy Dollars (\$1,070.00).
  
- (vii) If any section, subsection, sentence, clause or phrase of this By-law is for any reason held to be invalid by the decision of the Court of competent jurisdiction, this decision shall not affect the validity of the remaining portions of the By-law.

**12. PLURAL OR FEMININE TERMS**

“Plural or feminine terms” may apply whenever the singular, masculine or feminine is used in this by-law. It shall be considered as if the plural, feminine or masculine has been used where the context of the party or parties hereto so requires.

**13. VALIDITY**

The invalidity of any section, clause, sentence or provision of this by-law shall not affect the validity of any other section, clause, sentence or provision of this by-law which can be given effect without such part or parts.

- (i) A by-law entitled “A By-Law Respecting Nuisances Within The Town of Sussex, By-Law # 750-09” enacted on the 27<sup>th</sup> day of April, 2009, and amendments thereto is hereby repealed.

READ FIRST TIME BY TITLE February 16, 2015

READ SECOND TIME BY TITLE February 16, 2015

READ IN ENTIRETY March 16, 2015

THIRD READING BY TITLE  
AND ENACTED March 16, 2015

Paul Maguire  
TOWN CLERK

Marc Thorne  
MAYOR

TOWN OF SUSSEX  
BY-LAW #750-12

SCHEDULE "A"

APPLICATION FOR EXEMPTION TO THE NOISE BY-LAW

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? \_\_\_\_\_

Type of sound system  
to be used (if applicable): \_\_\_\_\_

Will efforts be made to  
curb the noise level? Yes (describe) \_\_\_\_\_ /No \_\_\_\_\_

Have or will surrounding  
property owners been 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.**