

ADMINISTRATIVE REPORT



TO: Planning & Development Committee
FROM: B. Newell, Chief Administrative Officer
DATE: August 18, 2022
RE: Proposed Noise Control Bylaw No. 2931, 2022

Administrative Recommendation:

THAT the following changes be made to the Regional District of Okanagan-Similkameen Noise Control Bylaw No. 2931, 2022:

- .1 that Electoral Area “H” be removed;**
 - .2 new definitions of “motorsport facility” and “natural resource extraction” be added;**
 - .3 a new exception be added allowing “natural resource extraction” uses to exceed specified noise levels to a maximum of 85 dBA, Monday to Friday between the hours of 7am to 5pm; and**
 - .4 A new exception be added allowing a “motorsport facility” use to exceed specified noise levels to a maximum of 95 dBA, Monday to Friday between the hours of 10am to 9pm, and Sundays and Statutory Holidays between the hours of 10am and 10pm.**
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Proposed Development:

To introduce a new Noise Control Bylaw No. 2931, 2022, for Electoral Areas “C”, “D”, “E”, “F” & “I”. This bylaw would replace the existing and separate noise control bylaws that are currently in place for these same electoral areas.

Background:

Under Section 324 (Noise Control) of the *Local Government Act*, the board may, by bylaw, “regulate or prohibit the making or causing of noises or sounds in or on a highway or elsewhere in the regional district.” At present, the Regional District has adopted Noise Control Bylaws for Electoral Areas “C”, “D”, “E”, “F”, “H” & “I”.

At its meeting of July 21, 2022, the Regional District Board resolved to remove Electoral Area “H” from the Noise Control Bylaw No. 2931, 2022, and further resolved to defer consideration of first reading “until questions regarding decibel levels can be answered.”

Analysis:

Further to the direction provided by the Board on July 21, 2022, Administration can advise the following:

Electoral Area “H”:

It is being proposed to remove Electoral Area “H” from the Draft Noise Control Bylaw No. 2931.

The current Electoral Area “H” Noise Control Service Establishment Bylaw No. 2627, 2013, and Noise Regulation and Prohibition Bylaw No. 2628, 2013, will be brought forward to a future Board meeting for direction (i.e. consideration of repeal).

Measuring Decibels:

The measurement of decibels under Bylaw No. 2931 will generally occur at the “Point of Reception”, which is defined as meaning a position that:

- (a) is within the property line of the real property occupied by the recipient of a noise or sound,
- (b) is located at least 1.2 metres above the surface of the ground, and
- (c) best represents the location at which the noise or sound, emanating from another property, is received and the resulting disturbance experienced; or
- (d) is within six metres outside of the real property from which the sound is emanating.

This is further supported by a definition of “Representative Time Period (RTP)” which establishes “the measurement period over which a sample of the level or character of the noise or sound under consideration will be taken.”

Non-Conforming Status (“Grandfathering”):

Under Section 327 (Noise control) of the *Local Government Act*, there are no non-conforming provisions that would allow an activity or use generating a volume of noise that is in contravention of a new noise control bylaw to lawfully continue operating.

Accordingly, all activities or uses would be expected to comply with the permitted sound levels specified at Section 6.0 of Bylaw No. 2931 following the adoption of this bylaw.

Heavy Industrial Uses:

All of the current noise control bylaws include an exception for construction projects that include references to gravel crushing and asphalt plants, specifically:

No person shall operate, use or allow, permit or cause to be used or operate any bulldozer, grader, backhoe, power shovel, loader, crane, pile-driver, pneumatic drill, jackhammer, concrete mixer, gravel crusher, asphalt plant [emphasis added], hammer or saw outside of the following hours ...

This allowance was subsequently interpreted broadly to include heavy industrial uses, such as natural resource extraction operations (e.g. aggregate pits).

Due, however, to the draft noise control bylaw containing a specific definition of “construction” that does not include heavy industrial uses, existing aggregate extraction operations that may have previously benefited from the expansive interpretation of construction would now have to comply with the maximum decibel levels established in the bylaw. Specifically:

NOISE SOURCE	NOISE RECEIVER			
	Quiet District		Activity District	
	Daytime	Nighttime	Daytime	Nighttime
Quiet District	55 dBA	45 dBA	60 dBA	60 dBA
Activity District	60 dBA	55 dBA	70 dBA	70 dBA

Of note, there are aggregate extraction operations that occur on lands that are not zoned commercial or industrial. This includes the aggregate operation in the West Bench (Electoral Area “F”) that is zoned Large Holdings One (LH1) and north of the Town of Oliver (Electoral Area “C”) that is zoned Resource Area (RA).

Conversely, the “construction” exception allows defined activities to exceed the levels specified above during certain times, specifically:

Day	Time
Monday – Saturday	7:00 am – 8:00 pm
Sundays and Statutory Holidays:	
Electoral Areas “C”, “D”, “F” & “I”	10:00 am – 5:00 pm
Electoral Area “E”	11:00 am – 4:00 pm

Should the Board wish to address this and provide a similar exception for natural resource extraction uses (i.e. gravel pits), consideration can be given to amending the draft noise control bylaw as follows:

- adding a new definition of “natural resource extraction” using a modified version the same definition from the Okanagan Valley Zoning Bylaw; and
- adding a new section related to natural resource extraction operations, similar to the section providing the construction exception, that allows permitted sound levels to be exceeded to a maximum of 85 dBA, Monday to Friday between the hours of 7am and 5 pm.

Penticton Speedway:

Administration is also proposing that a similar exception be provided for the Penticton Speedway through the inclusion of a definition of “motorsport facility” and allowance for such a use to exceed specified noise limits to a maximum of 95 dBA Monday to Friday and Sunday between the hours of 10am and 9 pm, and Saturdays and Statutory holidays between 10am and 10 pm.

Alternatives:

1. THAT the following changes be made to the Regional District of Okanagan-Similkameen Noise Control Bylaw No. 2931, 2022:
 - a) TBD
2. THAT no changes be made to the Regional District of Okanagan-Similkameen Noise Control Bylaw No. 2931, 2022.

Respectfully submitted:



C. Garrish, Planning Manager

M. Petry, Building & Bylaw Enforcement Manager

Attachments: No. 1 - Noise Control Bylaw No. 2931, 2022 (marked-up version 2022-08-18)