

BY-LAW NO. 2004-01

Of the Kitsumkalum Band

A BY-LAW FOR THE PREVENTION OF NOISE

ENACTED ON THE 19 DAY OF October, 2004

WHEREAS the Council of the Kitsumkalum Band desires to make a by-law governing the prevention of noise, with respect to any matter arising out of or ancillary to the exercise of powers under section 81, and for the imposition of a penalty for a violation thereof;

AND WHEREAS the Council of the Kitsumkalum Band is empowered to make such by-law pursuant to paragraphs 81(1)(d), (q) and (r) of the Indian Act;

AND WHEREAS it is considered to be expedient and necessary for the benefit, comfort and safety of the inhabitants of the Kitsumkalum Band to provide for the prevention of noise on the reserve;

NOW THEREFORE the Council of the Kitsumkalum Band hereby makes the following by-law:

Short Title

1. "Kitsumkalum Band Noise Control By-law."

Interpretation

2. In this by-law,

"band" means the Kitsumkalum Band;

"construction" includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, moving, land clearing, earth moving, grading, excavating, the laying of pipe and conduit whether above or below ground level, street and highway building, concreting, equipment installation and alteration and the structural installation of construction components and materials in any form or for any purpose, and includes any work in connection therewith;

"construction equipment" means any equipment or device designed and intended for use in construction or material handling, including but not limited to air compressors, pile drivers, pneumatic or hydraulic tools, bulldozers, tractors, excavators, trenchers, cranes, derricks, loaders, scrapers, pavers, generators, off-highway haulers or trucks, ditchers, compactors and rollers, pumps, concrete mixers, graders or other material handling equipment;

"conveyance" includes a vehicle and any other device employed to transport a person or persons or goods from place to place but does not include any such device or vehicle if operated only within the premises of a person;

"Council" means the Council, as defined in the Indian Act, of the Kitsumkalum Band;

"motor vehicle" includes an automobile, motorcycle, and any other vehicle propelled or driven otherwise than by muscular power; but does not include the cars of electric or steam railways, or other motor vehicles running only upon rails, or a motorized snow vehicle, traction engine, farm tractor, self-propelled implement of husbandry or road-building machine within the meaning of the Highway Traffic Act;

"noise" means unwanted sound that materially impairs the use and enjoyment of a person's property, or that prejudicially affects a person's health, comfort or convenience or the public health, safety or welfare of the reserve community, but does not include a sound to the extent it is unavoidable necessary for carrying on any business or other means of livelihood authorized by the Council;

"point of reception" means any point on the premises of a person where sound or vibration originating from other than those premises is received;

“officer” means any police officer, police constable or other person charged with the duty to preserve and maintain the public peace, and a by-law officer or any other person appointed by the Council for the purpose of maintaining law and order on the reserve;

“person” includes a corporation;

“reserve” means the reserve of the Kitsumkalum Band and includes the Band’s Reserves No. 1 and No. 3.

Zones

3. All lands within the geographic limit of the reserve of Kitsumkalum shall be considered as the area affected by this by-law.

General prohibitions

4. No person shall emit or cause or permit the emission of sound resulting from an act listed herein, and which sound is clearly audible at a point of reception:
 - a) racing of any motorized conveyance other than in a racing event regulated by law;
 - b) the operation of a motor vehicle in such a way that the tires squeal;
 - c) 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;
 - d) the operation of vehicle or a vehicle with a trailer resulting in banging, clanking, squealing or other like sounds due to improperly secured load or equipment or inadequate maintenance;
 - e) the operation of motor vehicle horn or other warning device except where required or authorized by law or in accordance with good safety practices;
 - f) the operation of any item of construction equipment within the reserve without effective muffling devices in good working order and in constant operation.

Prohibitions by time and place

5. No person shall emit or cause or permit the emission of sound resulting from any act listed in the attached “Table 1” if clearly audible at a point of reception located within the reserve within the prohibited time as shown.

Exemption

6. Notwithstanding any other provision of this by-law, it shall be lawful to emit or cause or permit the emission of sound or vibration in connection with the emergency measures undertaken:
 - a) for the immediate health, safety or welfare of the inhabitants or any of them; or
 - b) for the preservation or restoration of property;

unless such sound or vibration is clearly of a longer duration or nature more disturbing, than is reasonable necessary for the accomplishment of such emergency purpose.

Grant of exemption by Council

Application To Council

7. Notwithstanding anything contained in this by-law, any person may make application to Council to be granted an exemption from any of the provision of this by-law with respect to any source of sound or vibration for which he might be prosecuted and Council may, by resolution, refuse to grant any exemption or may grant the exemption applied for or any exemption of lesser effect and any exemption granted shall specify the time period, not in excess of six months, during which it is effective any may contain such terms and conditions as Council sees fit.

Decision

8. In deciding whether to grant the exemption, council shall give the applicant and any person opposed to the application an opportunity to be heard and may consider such other matters as it sees fit.

Reapplication

9. Where an application made under section 6 is refused, the Council is not required to consider any further application by that person for a period of one (1) year from the date of the refusal, unless the applicant can show that there has been a material change of circumstances.

Breach

10. Breach by the application of the terms or conditions of any exemption granted by Council shall render the exemption null and void.

Offence

11. (1) Every one who creates or causes a noise contrary to the provisions of this by-law is guilty of an offence.
- (2) An officer may order any person who is causing or who threatens to cause a noise on the reserve to refrain from causing the noise or to abate the noise within such period as is reasonable in the circumstances.
- (3) In determining whether a period fixed under subsection (2) was reasonable in the circumstances, the officer shall take into account
 - (a) the nature and extent of the noise;
 - (b) the methods available to abate the noise;
 - (c) the effect of the order on any business or means of livelihood of the person who is the subject of an order.

Enforcement

- 12.(1) Where a person who has been ordered to refrain from causing a noise or to abate a noise within a specified period, fails or refuses to comply with the order, an officer may take such reasonable measures as are necessary to abate the noise.
- (2) A person who fails or refuses to comply with an order made under this by-law or who resists or interferes with an officer acting under this by-law, commits an offence.

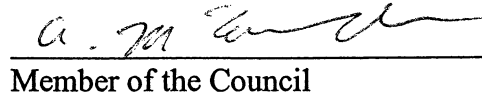
Penalty

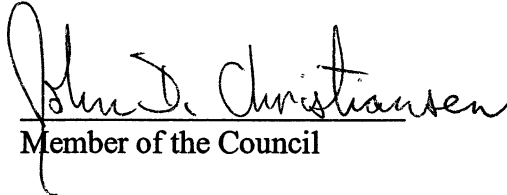
13. A person who commits an offence under this by-law is liable on summary conviction to a fine not exceeding \$1,000.00 or to imprisonment for a term not exceeding thirty days, or to both.

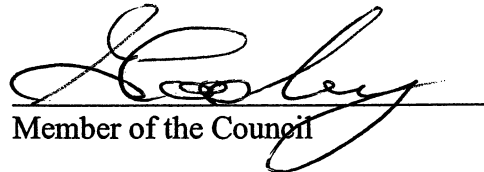
THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Kitsumkalum Band this 19 day of October, 2004

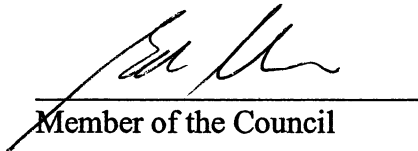
Voting in favour of the by-law are the following members of the Council:


Member of the Council


Member of the Council


Member of the Council


Member of the Council


Member of the Council

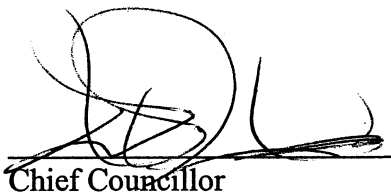

Member of the Council

Being the majority of those members of the Council of the Kitsumkalum Band present at the aforesaid meeting of the Council.

The quorum of the Council is 4 members.

No. of members of the Council present at the meeting: 6

I, Steve Roberts, Chief Councillor of the Band, do hereby certify that a true copy of the foregoing by-law was mailed to the Minister of Indian Affairs and Northern Development at the District/Regional/Hull office (as the case may be) pursuant to subsection 82(1) of the Indian Act, this 20 day of October, 2004.


Chief Councillor

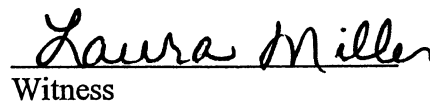

Witness

TABLE 1 – Prohibition by time	Prohibited period
The detonation, without the permission of the Band Council, of fireworks or explosive devices not used in construction	At all times
The discharge of firearms	At all times
The operation of any electronic device or group of connected electronic devices, incorporating one or more loudspeakers or other electro-mechanical transducers, and intended for the production, reproduction or amplification of sound.	11 PM to 7 AM
The operation of any auditory signaling device, including but not limited to the ringing of bells, except for religious services, or gongs and the blowing of horns or sirens or whistles, or the production, reproduction or amplification of any similar sounds by electronic means, except where required or authorized by law or in accordance with good safety practices.	11 PM to 7 AM
The operation of any motorized conveyance other than on a highway or other place intended for its operation	11 PM to 7 AM
Persistent barking, calling or whining or other similar noise making, if such noise persists for a period of time in excess of fifteen minutes, by any domestic pet or any other animal kept or used for any purpose other than agricultural	At all times
Yelling, shouting, hooting, whistling, or singing	11 PM to 7 AM
All selling or advertising by shouting or outcry or amplified sound	7 PM to 8 AM
Loading, unloading, delivering, packing, unpacking, or otherwise handling any containers, products, materials, or refuse, whatsoever, unless necessary for the maintenance of essential services, or the moving of private household effects	11 PM to 6 AM
The operation of any equipment in connection with construction	11 PM to 7 AM
The operation or use of any tool for household purposes other than snow removal	11 PM to 7 AM
The operation of solid waste bulk lift or refuse compacting equipment	11 PM to 6 AM
Playing of amplified music in such a way as to cause discomfort or disturbance	11 PM to 7 AM