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**Hupacasath Noise Control By-law  
BY-LAW NO. 20-05-06-01  
of the Hupacasath First Nation**

**A BY-LAW FOR THE PREVENTION OF NOISE**

**WHEREAS** the Council of the 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 of the *Indian Act*, and for the imposition of a penalty for a violation thereof;

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

**AND WHEREAS** it is considered to be expedient and necessary for the health, safety and protection of the inhabitants of the Band to provide for the prevention of noise on the Reserves;

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

**Short Title**

1. This by-law may be cited as the “Hupacasath Noise Control By-law”.

**Interpretation**

2. In this by-law:

“*Band*” means the Hupacasath First Nation;

“*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



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within the premises of a person;

“*Council*” means the council of the band, as defined in the *Indian Act*, of the Hupacasath First Nation;

“*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 or self-propelled implement of husbandry (within the meaning of the *Motor Vehicle Act* (British Columbia));

“*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 unavoidably necessary for carrying on any business or other means of livelihood authorized by the Council;

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

“*person*” means any means any natural person, resident or guest and includes a corporation, partnership, sole proprietorship, trust or other entity;

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

“*Reserves*” means the Band's reserves Ahahswinis No. 1 and Kleekhoot No. 2, and “*Reserve*” means either of them.

### **Zones**

3. All lands within the geographic limit of the Reserves 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 noise resulting from any of the following acts, and which sound is clearly audible at a point of reception:



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- (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, mark the road surface or omit noxious fumes;
- (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 a 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 a motor vehicle horn, air horn or other warning device except where required or authorized by law or in accordance with good safety practices; or
- (f) the operation of any item of construction equipment within the Reserves without effective muffling devices in good working order and in constant operation.

### **Prohibitions by Time**

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

### **Exemption**

6. Notwithstanding any other provision of this by-law, it shall be lawful to emit or cause or permit the emission of noise or vibration in connection with 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 noise or vibration is clearly of a longer duration or nature more disturbing than is reasonably 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



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Council to be granted an exemption from any provision of this by-law with respect to any source of noise or vibration for which such person 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 (6) months, during which it is effective and may contain such terms and conditions as Council sees fit.

### ***Decision***

8. In deciding whether to grant an exemption under section 7, 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 7 is refused, Council is not required to consider any further application by the applicant 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 relating to such prior application.

### ***Breach***

10. A breach by the applicant of any of the terms or conditions of any exemption granted by Council shall render the exemption null and void.

### **Offence**

11. (1) Everyone 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 Reserves 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 consider the following:
    - (a) the nature and extent of the noise;
    - (b) the methods available to abate the noise; and



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- (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. (1) A person who commits an offence under this by-law is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding thirty (30) days, or to both.

(2) The fines for applicable offenses are as set out in the by-law violation fines schedule attached to this by-law as Schedule A.

(3) Fines as indicated in subsection (1) may be recovered through Band distributions of any kind including cash, fish, seafood, or other distributions entitled to the Band member.

(4) Band members are responsible for the conduct and actions of their invited guests on the Reserves and may be held liable for fine of their guests.

### **Immunity**

14. No action for damages lies or may be instituted against present or past Council or members, employees, servants, or agents of either Hupacasath Administration or Council:

(a) for anything said or done or omitted to be said or done by such person in the performance or intended performance of such person's duty or the exercise of such person's authority; or

(b) for any alleged neglect or default in the performance or intended performance of such person's duty or the exercise of such person's authority.

### **Dispute Process**

15. (1) Any penalty pursuant to section 13 can be disputed within fourteen (14) days. Any



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penalty not disputed stands. Disputed penalties can either be:

- (a) disputed to Council; or
  - (b) adjudicated through a third-party adjudicator (with all final decisions by the adjudicator being binding on both the Band and the recipient of the penalty).
- (2) Recipients of a penalty that choose to have a disputed penalty adjudicated through a third-party adjudicator will apply to Council for an adjudication hearing, which adjudication process can take up to two (2) months to finalize.
- (3) An application made for an adjudication hearing may be cancelled by the recipient of the penalty by paying the applicable fine in full at any time.
- (4) A separate application for an adjudication hearing must be submitted for each separate penalty that is being disputed by the recipient.
- (5) Once a fine has been paid by the recipient of the penalty, the recipient is no longer eligible to make an application for the penalty to be adjudicated.
- (6) The following provisions shall apply to an adjudication hearing:
- (a) an adjudicator is not able to reduce the amount of a penalty;
  - (b) the officer that issued the penalty is not required to attend the adjudication hearing;
  - (c) if the penalty is upheld by the adjudicator, the recipient will be required to pay an additional \$50 fine on top of the previously issued fine.

### **General**

16. (1) Should a court determine that a provision of this by-law is invalid for any reason, the provision shall be severed from the by-law and the validity of the rest of the by-law shall not be affected.
- (2) This by-law comes into force twenty-four (24) hours after posting the by-law on the Band's website at [www.hupacasath.ca](http://www.hupacasath.ca), as required pursuant to subsection 86(1) of the *Indian Act*.

**THIS BY-LAW IS HEREBY** made at a duly convened meeting of the Council of the Band this 4th day of July, 2020.



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

(Member of the Council – Brandy Lauder) 

(Member of the Council – Jim Tatoosh) 

(Member of the Council – Warren Lauder) 

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

The quorum of the Council is 3 members.

No. of members of the Council present at the meeting: 3.

I, James Tatoosh Councillor of the Band, do hereby certify that a true copy of the foregoing by-law was published on the Band's website at [www.hupacasath.ca](http://www.hupacasath.ca), pursuant to subsection 86(1) of the *Indian Act*, this 4th day of July, 2020.

(Witness - ) (Councillor – Jim Tatoosh) 

*Richard Donald Hewson*  
Commissioner for Affidavits for British Columbia  
Commission Expires: November 30, 2021  
Appointee No. 2018-1567



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**TABLE 1 - Prohibition by time**

The detonation, without the permission of the Band Council, of fireworks or explosive devices not used in construction, except for December 31<sup>st</sup>, January 1<sup>st</sup> or October 31<sup>st</sup>.

**Prohibited period**

At all times

The discharge of firearms within 300 metres of any residential structure or public gathering place without the permission of Council.

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

11PM to 8AM

The operation of any auditory signalling 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

10 PM to 8 A.

The operation of any motorized conveyance other than on a highway or other place intended for its operation

10 PM to 8 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

10 PM to 8 AM

All selling or advertising by shouting or outcry or amplified sound

10 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

9 PM to 8 AM

The operation of any equipment in connection with construction

8 PM to 8 AM



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**The operation or use of any tool including mowers for household purposes other than snow removal**

**9 PM to 8 AM**

**The operation of solid waste bulk lift or refuse compacting equipment**

**9 PM to 8 AM**



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**SCHEDULE A**

**BY-LAW NO. 2020-05-06-01  
VIOLATION FINES SCHEDULES**

<b>By-Law No. 20-05-06-01 Code Violation Fines</b>	<b>By Law for the Prevention of Noise</b>	<b>1st Offence</b>	<b>2nd Offence</b>	<b>3rd Offence</b>
<b>1.1</b>	A person creates or permits noise to disturb neighborhood or persons in the vicinity	\$ 150.00	\$ 250.00	\$ 500.00
<b>1.2</b>	Landowner allow or permit noise to disturb neighborhood or persons in the vicinity	\$ 150.00	\$ 250.00	\$ 500.00
<b>1.3</b>	Operate sound or other equipment that creates noise, sounds to disturb neighborhood or persons in the vicinity	\$ 150.00	\$ 250.00	\$ 500.00
<b>1.4</b>	Disturbs the peace and quiet enjoyment of the neighborhood or persons in the vicinity including shouting, outcry, amplified sounds, shouting, whistling, singing or hooting	\$ 150.00	\$ 250.00	\$ 500.00
<b>1.5</b>	Permit any animal or bird that disturbs the peace, creates noise to disturb the neighborhood or persons in the vicinity	\$ 150.00	\$ 250.00	\$ 500.00
<b>1.6</b>	Make or cause construction noise	\$ 150.00	\$ 250.00	\$ 500.00
<b>1.7</b>	Operation of bulk lift or refuse compacting equipment	\$ 150.00	\$ 250.00	\$ 500.00
<b>1.8</b>	Detonation without permission of fireworks or explosive devices not used in construction except for December 31st, January 1st, October 31st	\$ 150.00	\$ 250.00	\$ 500.00
<b>1.9</b>	Races any motorized vehicle, operates a motor vehicle in such a way that the tires squeal, mark the road surfaces or emits noxious fumes	\$ 150.00	\$ 250.00	\$ 500.00



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<b>2</b>	<b>Discharge of firearms within 300 meters of any residential structure or public gathering place</b>	<b>\$ 250.00</b>	<b>\$ 500.00</b>	<b>\$ 1,000.00</b>
<b>2.1</b>	<b>Loading, unloading, packing, unpacking, or otherwise handling any containers, products, materials or refuse whatsoever unless for the maintenance of essential services</b>	<b>\$ 150.00</b>	<b>\$ 250.00</b>	<b>\$ 500.00</b>
<b>2.2</b>	<b>Interferes with the duties or conduct of a an officer who is enforcing this or any other by-law</b>	<b>\$ 500.00</b>	<b>\$ 750.00</b>	<b>\$ 1,000.00</b>