

Village of Duchess
Bylaw 459-14

A bylaw of the Village of Duchess to prohibit certain activities creating noise and to abate the incidence of noise and restrict the hours when certain sounds may be made.

Whereas the Municipal Government Act RSA 2000 Chapter M-26 authorizes a Council to pass bylaws for the purpose of prohibiting, eliminating or abating noise.

Whereas it is desirable to have regulations which affect noise in order to benefit the community as a whole. And to be compatible with normal activities of urban life and that unnecessary noise be eliminated.

Therefore, the Council of the Village of Duchess in the province of Alberta duly enacts as follows:

This Bylaw shall be cited as the “Noise Bylaw”.

In this bylaw the following definitions shall be valid:

a. Act – means the Municipal Government Act RSA 2000 Chapter M-26 and regulations made under the Municipal Government Act as amended.

b. Bylaw – means the Village of Duchess Bylaw # 459-14 as may be amended from time to time.

c. Chief Administrative Officer – means the Chief Administrative Officer of the Village of Duchess regardless of any subsequent title that may be conferred on that officer by Council or statute, or his/her designate.

d. Commercial – means a business use or activity at a scale greater than home industry involving retail or wholesale making of goods and services.

e. Construction – means the temporary process of excavating, demolishing or building any structure, or repairing or improving a structure that already exists, including landscaping, home repair and/or renovation, property improvement and any work in connection with that process.

f. Council – means the Municipal Council of the Village of Duchess.

g. Court – means a Provincial Court of competent jurisdiction within the Province of Alberta.

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h. Daytime – means the period:

- beginning at 7:00 am and ending at 10:00 pm of the same day on weekdays; or
- beginning at 9:00 am and ending at 10:00 pm of the same day on a weekend.

i. Industrial – means the use of land and/or buildings for the purpose of manufacturing, processing, refining, storing and/or distributing materials or products for sale or application elsewhere. Any on premises sales shall be incidental to the operation of the industry.

j. Land Use Bylaw – means the Village of Duchess Land Use Bylaw # 438/08 , as amended or replaced from time to time.

k. Motor Vehicle – as defined in the Traffic Safety Act, RSA 2000 Chapter T-6 as amended, means.

- a vehicle propelled by any power other than muscular power;
- a moped;
- a motor cycle that is mounted on 2 or 3 wheels and includes those motor vehicles known in the automotive trade as motor cycles and scooters.
- an off highway vehicle or any motorized mode of transportation built for cross country travel on land, water, snow, ice or marsh or swamp land or on other natural terrain; but,
 - does not include a bicycle, a power bicycle, an aircraft, an implement of husbandry or a motor vehicle that runs only on rails.

l. Motorized Garden Tool – means any tool used for horticulture that is powered by an electric or internal combustion engine of any kind.

m. Night time – means the period beginning at 10:00 pm and ending the following day at:

- 7:00 am if the following day is a weekday; or
- 9:00 am if the following day is a weekend.

n. Noise – means any sound that is reasonably likely to disturb the peace of other.

o. Operator – as defined in the Traffic Safety Act RSA 2000, Chapter T-6, as amended, means a person who is driving or is in actual physical control of a motor vehicle.

p. Owner – means

- in the case of land, to be registered under the Land Titles Act as the owner of the fee simple estate in a parcel of land; or

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- in the case of personal property, to be in lawful possession or have the right to exercise control over it; or

- in the case of a motor vehicle, to be the registered owner of the motor vehicle.

q. Peace Officer – means a Bylaw Enforcement Officer appointed by the County of Newell and contracted to the Village of Duchess pursuant to Section 555 of the Municipal Government Act and for the purpose of enforcement of this Bylaw, also includes a Community Peace Officer or a member of the Royal Canadian Mounted Police.

r. Person – means any person, firm, partnership, association, corporation, company or organization of any kind.

s. Residential – means a room or suite of rooms which form a dwelling unit that is exclusively used for human habitation purposes and includes houses, duplexes, townhouses, condominiums, apartments, and includes a vacant lot within a residential area.

t. Signalling Devices – means any device that produces an audible sound used for the purpose of drawing an individual's attention, including a horn, gong, bell, klaxon or public address system.

u. Village – means the Village of Duchess, a Municipal Corporation in the Province of Alberta, or the geographical area contained within the boundaries of the Village of Duchess, as the context may require.

v. Violation Tag – means a tag or similar document issued by the Village of Duchess pursuant to the Act.

w. Violation Ticket – means a ticket issued pursuant to Part II of the Provincial Offences Procedures Act, RSA 2000 chapter P-34, as amended and any regulations thereto.

x. Weekday – means Monday through Friday inclusive unless it falls on a holiday.

y. Weekend – means Saturday and Sunday and any other holiday.

Noise

Where an activity, which is not specifically prohibited or restricted by a provision of any Legislation or regulation of Canada or of the Province of Alberta or by any provision of this Bylaw, involves creating a sound which is, or may become, or creates or produces or may create or produce a disturbance or annoyance to other people or a danger to the comfort, repose, health, peace or safety of

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others, a person engaging in such an activity shall do so in such a manner as to create as little of such sound as practicable under the circumstances.

The provisions shall not be interpreted to prevent:

- a. The ringing of bells in churches, religious establishments and schools;
- b. the moderate use of musical instruments to call attention to a charitable or non-profit undertaking or event;
- c. the sounding of any alarm or warning to announce a fire or other emergency;
- d. the playing of a band in connection with a parade allowed pursuant to any Village of Duches Bylaw;
- e. the use of signalling devices on motor vehicles in their normal operation for the purpose of giving warning to other motor vehicles or persons;
- f. motor vehicles and equipment used to clear snow and ice from any Village highway or public area;
- g. construction at any premises during the daytime, whether or not the construction or renovation requires any Village permits;
- h. any work, whether urgent or not, on a Village highway or on a public utility carried out by the owner or operator of the public utility, or its authorized contractors; or,
- i. any activity within the sole jurisdiction of the Government of Canada or the Province of Alberta.

The provisions shall not prohibit;

- a. a person who is an employee or authorized agent of the Village of Duches from producing certain sounds while acting with the scope of their functions, duties or powers; or,
- b. the performance of any industrial activity by any person where the industrial activity is:
 - located on a premises that is designated for such use under the Land Use Bylaw; or
 - is a non-conforming use as defined in the Act.
 - the noise is generated pursuant to work done in the normal manner to that end; and
 - the work does not otherwise contravene any Federal, Provincial or Municipal laws or regulations.

c. In determining if a sound is reasonably likely to disturb the peace of others the following criteria may be considered:

- type, volume and duration of the sound;
- time of day and day of the week;
- nature and use of the surrounding area; and
- any other relevant factor.

Prohibited Noise

No person shall make, continue, cause or allow to be made, on a premises in which they are the owner or occupier, any loud, unnecessary or unusual noise that annoys, disturbs, injures, endangers the comfort, repose, health, peace or safety of other persons within the Village of Duchess limits.

No person shall yell, scream, or swear in any public area thereby creating a disturbance.

A person shall not operate, on a residential premises, during the nighttime:

- a. a lawn mower of any kind;
- b. a motorized garden tool;
- c. power tools outside of any structure;
- d. a model aircraft driven by an internal combustion engine of any kind;
- e. a snow clearing device powered by an engine of any kind; or,
- f. motorized snow or leaf blowing device.

A person shall not use a signalling device to promote or advertise the sale of ice cream or any other food in a residential area during the nighttime.

A person who owns, keeps, houses, harbors or allows to stay on his/her premises any animal which by reason of producing unnecessary noise, disturbs persons in the vicinity of his home is guilty of an offence under this bylaw.

Where an activity which is not specifically prohibited or restricted by this Bylaw involves making a sound that is or may become a loud, unnecessary or unusual noise that annoys, disturbs, injures, endangers the comfort, repose, health, peace or safety of other persons within the Village of Duchess limits; a Peace Officer

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empowered by the Village of Dutchess, may make the decision to enforce the provisions of the Bylaw.

Motor Vehicle Noise

No person shall permit a motor vehicle located on any premises to create noise which emanates from that premises and disturbs or annoys a person, including noise from excessive engine revving and stereo and amplification equipment emanating from the motor vehicle.

No owner or occupier of any premises with the Village of Dutchess shall permit, a motor vehicle located on the premises to emit noise which emanates from that premises and disturbs or annoys a person, including noise from excessive engine revving and stereo and amplification equipment emanating from a motor vehicle.

If a motor vehicle is involved in any offence against this Bylaw, the owner of that motor vehicle is liable for the contravention unless the owner, on a balance of probabilities, satisfies the Court that, at the time the motor vehicle was involved in the contravention, the owner was not present in the motor vehicle and no other person was operating the motor vehicle with the owner's express or implied consent.

Construction Noise

Any owner or occupier of a premises, within the Village of Dutchess shall not cause or permit any construction project before 7:00 am or after 10:00 pm on a weekday or before 9:00 am or after 10:00 pm on a weekend.

In the operation or carrying on of a construction project, the person operating or carrying on that project shall make no more noise that is necessary in the normal method of performing or carrying on that project.

Relaxations and Exceptions

This Bylaw does not apply to the Village of Dutchess Public Works Department or their designates in the performance of their duties.

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This Bylaw does not purport to regulate the cumulative effect of noise created by motor vehicle traffic on highways in or adjacent to the Village of Duchess, as well as aeronautical related activities of aircraft or any airport authority.

A person may operate a snow clearing device powered by an engine for the purpose of removal of snow and ice from highways, parking lots and sidewalks during the 24 twenty four hour period following a snowfall, rain or freezing rain, subject to the right of the Chief Administrative Officer to withdraw this relaxation on a site specific basis.

Enforcement

In making a determination as to contraventions of this Bylaw, a Peace Officer or the Court may take into consideration any or all of the following factors:

- a. the frequency of the activity
- b. the intensity and duration of the activity
- c. the time of day or season
- d. the nature of the surrounding area
- e. the effect of the noise or activity on a complainant or complainants; or,
- f. the effect of the noise or activity on the surrounding area.

General Provisions

Nothing in this Bylaw relieves a person from complying with any Federal or Provincial law or regulation, other Bylaw or any requirements of any lawful permit, order, consent or other direction.

Where this Bylaw refers to another Act, regulation or agency, it includes reference to any Act, regulation, or agency that may be substituted therefore.

A Peace Officer is for the purposes of enforcement of this Bylaw, a Designated Officer if the City.

A person who contravenes or does not comply with any provision of the Bylaw is guilty of an offence.

Fines and penalties imposed on a conviction for an offence under this Bylaw are an amount owing to the Village of duchess.

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The levying and payment of any fine for any period provided in this Bylaw shall not relieve a person from the necessity of paying any fees, charges or costs from which that person is liable under the provisions of this Bylaw or any other Bylaw.

Any person who breaches any provision of the Bylaw is guilty of an offence and liable:

- a. upon the issuance of a violation tag to the specified penalty as listed on Schedule "A" attached to and forming part of this bylaw;
- b. upon summary conviction to a fine of not less than the amount specified on Schedule "A" attached to and forming part of this bylaw for each offence, exclusive of costs.
- c. to a fine of not more than \$10,000 or to imprisonment for not more than one year, or both fine and imprisonment.

A Peace Officer is hereby authorized and empowered to issue a violation tag to any person who has contravened any provision of this bylaw.

A violation tag shall be deemed to be sufficiently served if:

- a. served personally on the accused; or,
- b. mailed to the address of the registered owner of the property concerned or to the person concerned; or
- c. served personally upon the manager, secretary, receptionist or other officer or person apparently in charge at any premises of the accused, or by mailing a copy to such accused.

A violation tag shall state:

- a. the name of the person or other information to adequately identify the person;
- b. approximate location of where the offence took place;
- c. the offence;
- d. the penalty for the offence set out on Schedule "A" of the bylaw;
- e. that the penalty shall be paid within (14) fourteen days from the issuance of the violation tag;

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f. any other information deemed necessary by the Chief Administrative Officer or by the provisions of the Act or the Provincial Procedure Act RSA 2000 chapter P-34 as amended.

Where a breach of this bylaw is of a continuing nature, each day on which it continues or is repeated shall constitute a separate offense, and shall be liable to a separate penalty.

Where a violation tag has been issued for breach of any provision of this bylaw, the person to whom the violation tag is issued may, in lieu of being prosecuted for the offence, pay to the Village of penalty specified on the violation tag.

Nothing in the bylaw shall prevent a Peace Officer from immediately issuing a violation ticket.

a. if a person upon whom a violation tag is served above fails to pay the voluntary payment within the time specified, a Peace Officer is hereby authorized and empowered to issue a violation ticket pursuant to Part II of the Provincial Offences Procedure Act RSA 2000 Chapter P-34, as amended, or as repealed and replaced from time to time.

b. the person to whom the violation ticket may, in the case of a violation ticket issued pursuant to the Provincial Offences Procedure Act RSA 2000 Chapter P-34, as amended, or as repealed and replaced from time to time, plead guilty by making a voluntary payment in respect to the summons delivering to the Provincial Court, on or before the initial appearance date, the violation ticket together with an amount equal to the specified penalty for the offence as provided for in Schedule "A" to this bylaw.

c. any person who is guilty by way of summary conviction of an offense under the provisions of this bylaw shall be liable for a fine of not less than the amount specified for that particular breach of this bylaw, plus associated court costs pursuant to Part II of the Provincial Offences Procedure Act RSA 2000 Chapter P-34, as amended, or as repealed and replaced from time to time.

Severability

It is the intention of Council that each separate provision of this bylaw shall be deemed independent of all other provisions herein and it is the further intention

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of Council that if any provision of this bylaw is declared invalid, all other provisions herein shall remain invalid and enforceable.

Repeal of Bylaw

Bylaw 356/94 is hereby repealed.

Effective Date

This Bylaw shall take effect at the date of the final passing thereof:

Read a first time this _____ day of _____ 2014.

Read a second time this _____ day of _____ 2014.

Read a third and final time this _____ day of _____ 2014.

Mayor

Chief Administrative Officer

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Schedule A – Specified Penalties

	Offence	Penalty	2 nd or subsequent offence in one year
459-14-1	Make, continue, cause or allow noise to be made	\$ 250.00	\$ 400.00
459-14-2	Yell, scream or swear in a public area	\$ 250.00	\$ 400.00
459-14-3	Operate a prohibited device during the nighttime	\$ 250.00	\$ 400.00
459-14-4	Use a signalling device in a residential area during the nighttime	\$ 250.00	\$ 400.00
459-14-5	Cause or permit a motor vehicle to emit noise	\$ 250.00	\$ 400.00
459-14-6	Cause or permit a construction project during prohibited hours	\$ 250.00	\$ 400.00
459-14-7	Allow an animal to make unnecessary noise	\$ 250.00	\$ 400.00