

The Corporation of the City of North Bay

By-Law No. 2014-53

Being a By-Law to Control Noise

Whereas section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (*Municipal Act*), provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under that Act or any other Act.

And Whereas section 10(1) of the *Municipal Act* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

And Whereas section 10(2) of the *Municipal Act* provides that a municipality may pass By-Laws respecting: in paragraph 5, social and environmental well-being of the municipality; in paragraph 6, health, safety and well-being of persons; in paragraph 7, services and things that the municipality is authorized to provide under section 10(1); in paragraph 8, protection of persons and property; and in paragraph 9, animals;

And Whereas section 129 of the *Municipal Act* provides that a municipality may (a) prohibit and regulate with respect to noise and vibration, and (b) prohibit noise and vibration unless a permit is obtained from the municipality, and may impose conditions for obtaining, continuing to hold, and renewing permits, including requiring the submission of plans;

And Whereas section 128 of the *Municipal Act* provides that a municipality may prohibit and regulate with respect to public nuisances, including matters that in the opinion of the municipality's Council, are or could become public nuisances;

And Whereas in the opinion of Council for the City of North Bay, certain kinds of noise and vibration are or could become a public nuisance;

And Whereas it is the policy of the Council to reduce and control such noise and vibration;

And Whereas Council authorized the enactment of the Noise By-Law by passing Engineering and Works Committee Report No. 2014-04 at its Regular Meeting on the 17th day of March, 2014;

Now therefore, the Council of The Corporation of the City of North Bay hereby enacts as follows:

1. Interpretation

Definitions

In this By-Law,

- (a) "By-Law Enforcement Officer" means anyone appointed for the purpose of enforcing City By-Laws;
- (b) "City" means The Corporation of the City of North Bay;
- (c) "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 of for any purpose, and includes any work in connection therewith;

- (d) "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;
- (e) "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 a building;
- (f) "Council" means the Council of The Corporation of the City of North Bay;
- (g) "Highway" includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof;
- (h) "Motor Vehicle" includes an automobile, a motorcycle, a motor-assisted bicycle, and any other vehicle propelled or driven otherwise than by muscular power, but does not include a street car or other motor vehicle running only upon rails, a power-assisted bicycle, a motorized snow vehicle, a traction engine, a farm tractor, a self-propelled implement of husbandry or a road building machine within the meaning of the *Highway Traffic Act*, R.S.O. 1990, c. H.8;
- (i) "Motorized Conveyance" means a conveyance propelled or driven otherwise than by muscular, gravitational or wind power;
- (j) "Municipality" means the land with the geographic limit of the City of North Bay;
- (k) "Noise" means unwelcome sound;
- (l) "Noise Control Officer" means a person designated by Council as responsible for the administration of this By-Law, and more specifically shall be the Managing Director of Engineering, Environmental Services and Works and/or designate;
- (m) "Person" includes a Corporation;
- (n) "Point of Reception" means any point on the premises of a person where sound or vibration originating from other than those premises is received;
- (o) "Quiet Zone" means any area of the municipality that is within the areas as shown on Appendix "A" of Schedule 2 of this By-Law;
- (p) "Residential Area" means those areas zoned by the City of North Bay Zoning By-Law No. 28-80, as amended, and any successor By-Law thereto, as a "Residential" Zone, with the exception of any area zoned as "Rural Residential". In addition, for the purposes of this By-Law, "Residential Area" includes any premises

utilized for a residential use, whether principal or accessory, within any Commercial or Industrial Zone, as defined by the City of North Bay Zoning By-Law, where both the point of origin and the point of reception of the sound or vibration are located on a premises being used for a residential use;

- (q) "Stationary Source" means a source of sound which does not normally move from place to place and includes the premises of a person as one stationary source, unless the dominant source of sound on those premises is construction equipment or a conveyance.

2. Prohibitions

No person shall emit or cause or permit the emission of sound or vibration resulting from an act listed in Schedule 1 – General Prohibitions if the noise is clearly audible, or the vibration is evident at a point of reception.

3. Limitations by Time and Place

No person shall emit or cause or permit the emission of sound or vibration resulting from any act listed in Schedule 2 – Prohibitions by Time and Place, if the noise is clearly audible, or the vibration is evident, at a point of reception located in an area of the municipality specified in Schedule 2 within a prohibited time shown for that area.

4. Public Safety Exemption

Notwithstanding any other provision of this By-Law, it shall be lawful during an emergency to emit or cause or permit the emission of sound or vibration in connection with emergency measures:

- (a) for the immediate health, safety or welfare of the inhabitants; or
- (b) for the preservation or restoration of property;

unless the sound or vibration is clearly of a longer duration, or nature more disturbing, than is reasonably necessary to deal with the emergency.

5. Grant of Exemption by Council

- (a) Application to Council

Notwithstanding anything contained in this By-Law, any person may make an application to Council to be granted an exemption from any of the provisions of this By-Law with respect to any source of sound or vibration for which that person might be prosecuted and Council, by resolution, may 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 during which it is effective and may contain such terms and conditions as Council sees fit.

- (b) Details of Application of Exemption

The application for exemption referred to in subsection (a) shall be made in writing on the form provided by the City Clerk and, without limitation, shall include:

- (i) the name and address of the applicant;
- (ii) a description of the source of sound or vibration in respect

- of which the exemption is sought;
- (iii) a statement of the particular provision or provisions of the By-Law from which exemption is sought;
- (iv) the period of time, of a duration not in excess of six months, for which the exemption is sought;
- (v) the reasons why the exemption should be granted;
- (vi) a statement of the steps, if any, planned or presently being taken to bring about compliance with the By-Law; and
- (vii) a plan showing the location of the event/premises, the location of amplification equipment and speakers and methods employed to prevent sound from unnecessarily escaping from the event/premises, the location from which the sound levels will be measured, if applicable and any additional information as deemed necessary by the City Clerk or Council to consider the application made under this section.

(c) Time for Applying

Applications for exemptions must be complete and received by the City Clerk at least 60 days prior to the date of the exemption sought.

(d) Application Fee and Costs

No application shall be deemed complete until the applicant has provided all information as required by the City Clerk or Council, and has paid the applicable application fee as provided by the City of North Bay By-Law to Authorize User Fees for City Departments, No. 2011-123, or any successor By-Law thereto. Where additional costs may be incurred by the applicant, such costs shall be borne by the applicant.

(e) Commercial Zone Exemptions

Noise By-Law Exemptions granted for events at commercially zoned properties may exceed the maximum times and maximum sound levels as follow:

<u>Event Definition</u>	<u>Date</u>	<u>Maximum Time Permitted</u>
Summer in the Park	Applicable Friday	As specified in Schedule 3.
	Applicable Saturday	As specified in Schedule 3.
	Applicable Sunday	Until midnight of the same day.

(f) Report of Noise Control Officer

- (i) Council shall cause a copy of the application for exemption to be delivered to the Noise Control Officer who will prepare a report to Council forthwith, stating his or her opinion of the merits of the application as well as recommendations as to terms and conditions which, in his or her opinion, should be imposed upon the applicant if the exemption is granted.
- (ii) Council will not consider the application for exemption until it has received the report of the Noise Control Officer.

(g) Public Notification

- (i) The City Clerk shall place a public notice in a local newspaper at least 10 days prior to the date and time that Council will consider a Noise By-Law Exemption, which shall state the location(s), date(s), and time(s) of the requested

exemption.

- (ii) The applicant shall pay the advertising costs as provided by the City of North Bay By-Law to Authorize User Fees for City Departments, No. 2011-123, or any successor By-Law thereto.

(h) Decision

In deciding whether to grant the exemption, Council shall consider the application, any written submission of the applicant received by Council, and the report of the Noise Control Officer, and Council may consider such other matter as it sees fit.

(i) Noise Level Measurements

An applicant who is granted an exemption pursuant to section 5 of this By-Law, or his or her delegate, shall:

- (i) ensure that noise levels do not exceed the levels set out on Schedule 3 of this By-Law at all relevant times;
- (ii) ensure that true and accurate noise level readings are measured and entered into the report referred to in Schedule 3 at the time any noise is made from the premises;
- (iii) provide to a Police Officer and to a By-Law Enforcement Officer upon request the survey of the noise levels required to be taken pursuant to Schedule 3; and
- (iv) provide the noise level report required by Schedule 3 to the City Clerk, certified by the applicant to be correct and true as if given under the *Canada Evidence Act*, within 10 days of the event.

6. Grant of Exemption by Managing Director

(a) Authority

Notwithstanding the provisions of section 5 of this By-Law, the Managing Director of Engineering, Environmental Services and Works has authority to grant a Noise Control By-Law exemption for those requests where:

- (i) it is demonstrated that it would not otherwise be possible to meet the provisions of subsections 5(c) and 5(g); and
- (ii) such approval is necessary to achieve a public work or will result in an economic benefit to the City.

(b) Exemption

Where the Managing Director of Engineering, Environmental Services and Works has granted an exemption pursuant to this section, the provisions of section 5 of this By-Law do not apply.

7. Breach

If any of the terms or conditions of an exemption are breached, the exemption shall be null and void.

8. Exemption of Traditional, Festive or Religious Activities

Notwithstanding any other provision of this By-Law, this By-Law does not apply to a person who emits or causes or permits the emission of sound or vibration in connection with any of the traditional, festive, religious and other activities listed in Schedule 4 of this By-Law.

9. Severability

If a Court of competent jurisdiction should declare any section or part of a section of this By-Law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of the By-Law and it is hereby declared that the remainder of the By-Law shall be valid and shall remain in force.

10. Obstruction

No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this By-Law.

11. Offence and Penalty Provisions

- (a) Any person who contravenes any provision of this By-Law is guilty of an offence.
- (b) Any director or officer of a corporation who knowingly concurs in the contravention by the corporation of any provision of this By-Law is guilty of an offence.
- (c) Any person who contravenes an Order issued by a court pursuant to this By-Law is guilty of an offence.
- (d) Any person who is found guilty of an offence under this By-Law is liable:
 - (i) upon a first conviction, to a minimum fine of \$200.00 and a maximum fine of \$5,000.00; and
 - (ii) upon any subsequent conviction, to a minimum fine of \$400.00 and a maximum fine of \$10,000.00.
- (e) Notwithstanding the provisions of section 11(d), where the person found guilty is a corporation, the corporation is liable:
 - (i) upon a first conviction, to a minimum fine of \$500.00 and a maximum fine of \$10,000.00; and
 - (ii) upon any subsequent conviction, to a minimum fine of \$1,000.00 and a maximum fine of \$25,000.00.
- (f) If any provision of this By-Law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by this By-Law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted.

12. By-Law Approval

By-Law No. 2014-053 shall come into force or take effect upon approval of set fines for offences by the Regional Senior Justice of the

Ontario Court of Justice pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and regulations thereto.

13. Repeal

By-Law No. 1976-142 and all amending By-Laws thereto shall be hereby repealed, effective upon receipt by the City of the approved set fines from the Regional Senior Justice of the Ontario Court of Justice.

Read a First Time in Open Council this 31st day of March 2014.

Read a Second Time in Open Council this 31st day of March 2014.

Read a Third Time in Open Council and Passed this 31st day of March 2014.

Mayor Allan McDonald

City Clerk Catherine Conrad

**This is Schedule 1 to By-Law No. 2014-53
of The Corporation of the City of North Bay**

General Prohibitions

1. Racing of any motorized conveyance other than in a racing event regulated by law.
2. The operation of a motor vehicle in such a way that the tires squeal.
3. The operation of any combustion engine without an effective exhaust muffling device in good working order and in constant operation.
4. The operation of a vehicle or a vehicle with a trailer resulting in banging, clanking, squealing or other like sounds due to an improperly secured load or equipment, or inadequate maintenance.
5. The operation of an engine or motor in, or on, any motor vehicle or item of attached auxiliary equipment for a continuous period exceeding five minutes, while the vehicle is stationary in a residential area or in a Quiet Zone unless:
 - (i) the vehicle is in an enclosed structure constructed so as to effectively prevent excessive noise emission;
 - (ii) the original equipment manufacturer specifically recommends a longer idling period for normal and efficient operation of the motor vehicle in which case such recommended period shall not be exceeded;
 - (iii) operation of the engine or motor is essential to a basic function of the vehicle or equipment, including but not limited to, operation of ready-mix concrete trucks, lift platforms or refuse compactors and heat exchange systems;
 - (iv) weather conditions justify the use of heating or refrigerating systems powered by the motor or engine for the safety and welfare of the operator, passengers or animals or the preservation of perishable cargo, and the vehicle is stationary for the purposes of delivery or loading;
 - (v) prevailing low temperatures make longer idling periods necessary, immediately after starting the motor or engine; or
 - (vi) the idling is for the purpose of cleaning and flushing the radiator and associated circulation system for seasonal change of antifreeze, cleaning of the fuel system, carburetor or the like, when such work is performed other than for profit.
6. The operation of a motor vehicle horn or other warning device except where required or authorized by law.
7. The operation of any item of construction equipment in a Quiet Zone without effective muffling devices in good working order and in constant operation.
8. The operation of a combustion engine for the purpose of refrigerating perishable goods at a place where the goods are to be offered for sale, unless the engine is in an enclosed structure constructed so as to effectively prevent noise emission.
9. The activity of applying engine compression brakes.

**This is Schedule 2 to By-Law No. 2014-53
of The Corporation of the City of North Bay**

Prohibitions by Time and Place

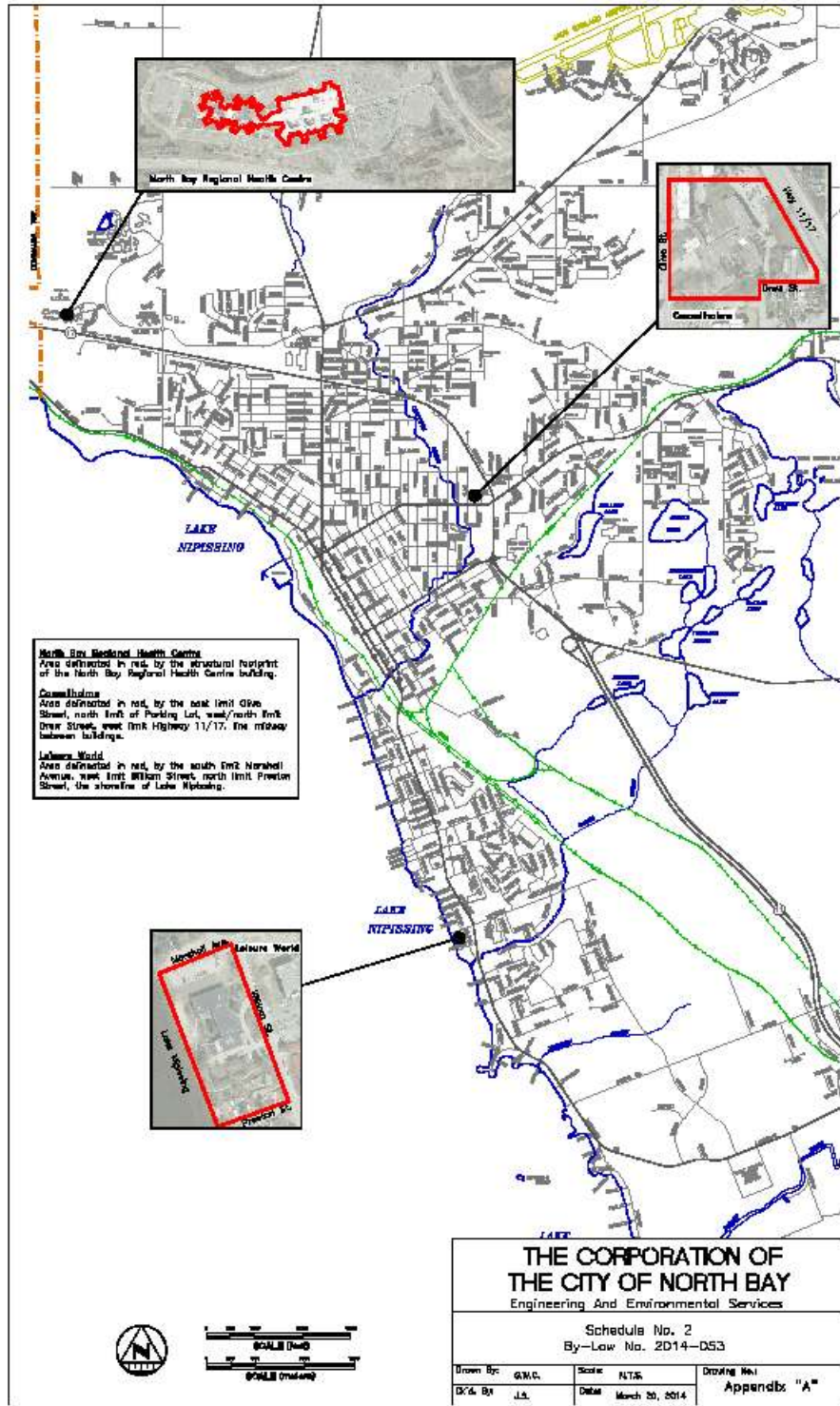
	Quiet Zone	Residential Area
1. The operation of any auditory signaling device, including but not limited to the ringing of bells or gongs and the blowing of horns or sirens or whistles, or the amplification of any similar sounds by electronic means except where required or authorized by law or in accordance with good safety practices.	At any time	B and D
2. 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.	At any time	At any time
3. All selling or advertising by shouting or outcry or amplified sound.	At any time	B and D
4. Loading, unloading, delivering, packing, unpacking, or otherwise handling of containers, products, materials, or refuse, whatsoever, unless necessary for the maintenance of essential services.	B	B and D
5. The operation of any construction equipment in connection with construction.	E and D	F and D
6. The detonation of fireworks or explosive devices.	At any time	A
7. The discharge of firearms.	At any time	At any time
8. The operation of combustion engine which, (i) is, (ii) is used in, or (iii) is intended for use in a toy or model or replica of a larger device, which model or replica has no function other than amusement and which is not a conveyance.	At any time	B
9. The operation of any powered rail car including but not limited to refrigeration cars, locomotives, or self-propelled passenger cars, while stationary on property not owned or controlled by a railway governed by the <i>Canada Transportation Act, S.C. 1996, c.10</i>	At any time	A

	Quiet Zone	Residential Area
10. The operation of any motorized conveyance other than on a highway or other place intended for its operation.	At any time	B
11. The venting, release or pressure relief of air, steam or other gaseous material, product or compound from any autoclave, boiler, pressure vessel, pipe, valve, machine, device or system.	At any time	A
12. Persistent barking, whining or other similar persistent noise making by any domestic pet.	At any time	At any time
13. The operation of any powered or non-powered tool for domestic purposes other than snow removal.	A	A
14. The operation of solid waste bulk lifts or refuse compacting equipment.	C	B
15. The operation of commercial car wash equipment.	C	A
16. Persistent yelling, shouting, hooting, whistling or singing.	At any time	A

Restricted Times

- A – 23:00 Hrs. of one day to 07:00 Hrs. next day
(09:00 Hrs. Sundays)
- B – 19:00 Hrs. of one day to 07:00 Hrs. next day
(09:00 Hrs. Sundays)
- C – 17: 00 Hrs. of one day to 07:00 Hrs. next day
(09:00 Hrs. Sundays)
- D – All day Sundays and Statutory Holidays
- E – 17:00 Hrs. of one day to 07:00 Hrs. next day
- F – 19:00 Hrs. of one day to 07:00 Hrs. next day

Appendix "A" to Schedule 2
Quiet Zones



**This is Schedule 3 to By-Law No. 2014-53
of The Corporation of the City of North Bay**

Restrictions

Time Interval Friday/Saturday	11:59 pm - 1:00 am	1:00 am - 1:45 am	1:45 am - 2:00 am (Music off 2:00 am)	2:00 am - 7:00 am
Maximum dBA	90	75	60	50
Frequency of Sound Level Measurements	Every 10 minutes	Every 5 minutes	Every 2 minutes	Every 5 minutes
Total Number of Sound Level Measurements	6	9	7	3 consecutive starting a 2:00 am
Maximum distance from source that measurement is taken	7.6m (measurement to be unobstructed and taken outdoors)	7.6 m (measurement to be unobstructed and taken outdoors)	7.6 m (measurement to be unobstructed and taken outdoors)	7.6 m (measurement to be unobstructed and taken outdoors)

Time Interval Sunday	11:45 pm - 12:00 am (Music off 12:00 am)	12:00 am - 12:15 am	12:15 am - 7:00am
Maximum dBA	90	60	50
Frequency of Sound Level Measurements	Every 2 minutes	Every 2 minutes	Every 5 minutes
Total Number of Sound Level Measurements	7	7	3 consecutive starting a 12:15 am
Maximum distance from source that measurement is taken	7.6 m (measurement to be unobstructed and taken outdoors)	7.6 m (measurement to be unobstructed and taken outdoors)	7.6 m (measurement to be unobstructed and taken outdoors)

Measurement Criteria:

Measurement of sound levels shall be the responsibility of the applicant who has been granted the exemption.

The "sound level" will be determined by measuring the sound pressure level measured in decibels using the "A" weighting network setting of a sound meter (being a device listed in ANSI Type II or IEC 123 that is calibrated for the measurement of sound and includes Bruel and Kjaer's Precision Sound Level meter, which setting meets the minimum specification in ANSI Type II or IEC 123).

An acoustical calibrator shall be used.

A windscreen shall be used on all outdoor measurements.

Documentation Required:

- Sound levels must be conducted as per Schedule 4 for each period and shall be recorded on an official sound level record form.
- Calibration must be performed at the start and at the end of the monitoring period.
- Sound measuring devices must use the "A" weighting and FAST response characteristics.
- Background noise must be at least 10 decibels lower than the noise source being measured.
- A survey form must be completed containing date, time, location, noise source, wind speed/direction, temperature, humidity, equipment information (make, model, serial #), site sketch with the location of the noise source and measurement location (including appropriate distances), data and calibration information. A sample survey form is available from the City.
- The survey form must be provided:
 - to the City Clerk within ten (10) days of the event; and
 - to the Police or By-Law Enforcement Officer, at the event / premises, upon request.

**This is Schedule 4 to By-Law No. 2014-53
of The Corporation of the City of North Bay**

Activities to Which the By-Law Does Not Apply

1. The use in a reasonable manner of an apparatus or mechanism for the amplification of the human voice or of music within the North Bay Waterfront Park between the hours of 8:00 am and 11:00 pm provided that written permission approving the event has been obtained from the Director of Parks, Recreation and Leisure Services or his or her designate.

2. The use in a reasonable manner of an apparatus or mechanism for the amplification of the human voice or of music within the City of North Bay in connection with any public election meeting, public celebration or other lawful gathering, provided that written permission of Council to hold the meeting, celebration, or gathering has been first obtained under the applicable By-Law of The Corporation of the City of North Bay.

3. Any band provided that written permission of Council to operate the band has been first obtained under any applicable By-Law of The Corporation of the City of North Bay.

4. Any parade, provided that the proper permit to carry out the parade has been first obtained from the North Bay Police Services.

THE CORPORATION OF THE CITY OF NORTH BAY - SET FINES

PART I – PROVINCIAL OFFENCES ACT

NOISE CONTROL BY-LAW NO. 2014-053

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Offence Creating Provision or Defining Offence	COLUMN 3 Set Fine
1.	Permit emission of sound by prohibited act	Section 2	\$200.00
2.	Permit emission of sound by prohibited act during prohibited period	Section 3	\$200.00
3.	Obstruct person in performance of duty	Section 10	\$200.00
4.	Breach of court order	Section 11(c)	\$400.00

Note: The penalty provision for the offence indicated above is Section 11 of By-Law No. 2014-XX a certified copy of which has been filed