

BY-LAW NO. 655-07

**A BY-LAW OF THE TOWN OF NIVERVILLE
TO REGULATE NOISES**

WHEREAS *The Municipal Act, C.C.S.M., Cap. M225* (the "Act") provides in part as follows:

- “232(1) A council may pass by-laws for municipal purposes respecting the following matters:
- (a) the safety, health, protection and well-being of people and the safety and protection of property;
 - (b) people, activities and things in, on or near a public place or a place open to the public including parks, municipal roads, recreation centres, restaurants, facilities, retail stores, malls and private clubs and facilities that are exempt from municipal taxation;
 - (c) subject to section 233, activities or things in or on private property;....
- 233 A by-law under clause 232(1)(c) (activities or things in or on private property) may contain provisions only in respect of
- (d) activities or things that in the opinion of the council are or could become a nuisance, which may include noise, weeds, odours, unsightly property, fumes and vibrations.”

NOW, THEREFORE, the Council of the Town of Niverville IN OPEN SESSION DULY ASSEMBLED enacts as follows:

Section 1 – Definitions

All terminology used in this by-law, not defined below, shall be in conformance with current publications of the Canadian Standards Association (CSA) and the American National Standards Institute (ANSI) or their respective successor bodies.

- 1.1 **Emergency** – Means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.
- 1.2 **Emergency Work** – Means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.
- 1.3 **Industrial Machine** – Means any machine properly used in any zone of the Municipality in accordance with applicable planning provisions of the Municipality - including contractor’s equipment that causes noise immediately outside the limits of the parcel of land on which it is located in excess of 85 decibels.
- 1.4 **Motor Vehicle** – Means an automobile, motorcycle, truck and any other vehicle propelled or driven otherwise than by muscular power.
- 1.5 **Motorized Recreational Vehicles** – Means all recreational motorized vehicles whether or not duly licensed and registered, including, but not limited to commercial or non commercial racing vehicles, motorcycles, go-carts, snowmobile, trail trikes, amphibious craft and motor boats.
- 1.6 **Municipality** – Means the Town of Niverville.
- 1.7 **Noise Nuisance** – Means any loud, unnecessary or unusual sound or any sound whatsoever which either annoys, disturbs, injures, endangers or distracts from the comfort, repose, health, peace or safety of any person.
- 1.8 **Person** – Means any individual, firm, partnership, association, corporation, company or organization of any kind.
- 1.9 **Point of Reception** – Means any point on any lands or premises where sound, originating from other lands or premises, is received.

- 1.10 Powered Model Vehicles – Means any self-propelled airborne, waterborne or landborne airplane, vessel or vehicle, which is not designed to carry a person including, but not limited to any model airplane, boat, car or rocket.
- 1.11 Public Right-of Way – Means any street, avenue, land, highway, boulevard, sidewalk, bridge, thoroughfare or way or similar place, which is owned or controlled by a governmental entity.
- 1.12 Public Space – Means any real property or structures thereon which are owned or controlled by a governmental entity.
- 1.13 Sound – Means an oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that causes compression and rarification of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Section 2 – Prohibited Acts

- 2.1 Noise Nuisance Prohibited – Except to the extent permitted by this by-law, no person shall make, or cause to be made or continued any noise nuisance.
- 2.2 Specific Prohibitions – The following acts, among others and the causing thereof, are declared to be in violation of this bylaw, but said enumeration shall not be deemed exhaustive, namely.
 - 2.2.1 Equipment Noise (including motor vehicles) – No person shall operate or permit the operation of any power or manual equipment, machinery, device or motor vehicle in such a manner as to create a noise nuisance.
 - 2.2.2 People Noise – No person shall yell, shout, whistle or sing to the extent that a noise nuisance is created.
 - 2.2.3 Powered Model Vehicles – No person shall operate or permit the operation of a Powered Model Vehicle so as to create a noise nuisance at a point of reception between the hours of 9:00 p.m. on any day and 9:00 a.m. of the following day.
 - 2.2.4 Radios, Television Sets, Musical Instruments & Sound Producing Devices – No person shall operate, play or permit the operation of any radio, television, phonograph, drum, musical instrument, loud speaker, public address system, sound amplifier or similar device which produces, reproduces or amplifies sound in such manner so as to create a noise nuisance at a point of reception at any time.
 - 2.2.5 Vehicle or Motor Boat Repairs and Testing – No person shall repair, rebuild, modify or test any motor vehicle, motorcycle, motor boat, outboard motor or recreational vehicle in such a manner as to create a noise nuisance at a point of reception between the hours of 10:00 p.m. on any day and 7:00 a.m. of the following day on any day of the week.
 - 2.2.6 Animal or Bird Noise – No person owning or possessing or harbouring any animal or bird shall allow it to create a noise nuisance.
 - 2.2.7 Industrial Machine - No person shall operate in such a manner as to create a noise nuisance at a point of reception between the hours of 12 midnight and 6:00 a.m., Monday thru Saturday, both inclusive or before 12:00 noon on Sunday.

Section 3 – Exemptions

- 3.1 The provisions of this bylaw shall not apply to:
 - 3.1.1 The existence of an emergency or the emission of sound in the performance of emergency work unless such sound is clearly of a longer duration or nature more disturbing than is reasonably necessary for the accomplishment of such emergency purposes.
 - 3.1.2 Work performed in respect of the maintenance, construction or demolition of a public right-of-way or public space.
 - 3.1.3 Any vehicle of the police or fire department or any ambulance or any public service or emergency vehicle while answering a call.

- 3.1.4 The ringing of bells by a church or school.
- 3.1.5 The using or operating of sound producing devices during the month of December in any year for the rendering of Christmas carols.
- 3.1.6 Indoor concerts, circuses, fairs, parades, military band, or like activity.
- 3.1.7 Any activity, work or undertaking which would otherwise be prohibited by this bylaw where permission has been obtained from the municipality.
- 3.1.8 Aircraft.
- 3.1.9 Any operation of agricultural machinery being used for agricultural purpose.

Section 4 – Penalty

- 4.1 Any person found guilty of any breach of any of the provisions of this bylaw shall on summary conviction be liable to pay a fine of not less than One Hundred (\$100.00) Dollars and not more than One Thousand (\$1,000.00) Dollars in addition to costs for each offence and/or the Municipality may take such further or other legal action for contravention of this by-law as the Municipality considers appropriate and is permitted under the Act.
- 4.2 Where the contravention, refusal, neglect, omission, or failure, continues for more than one day, the person is guilty of separate offence for each day that it continues.
- 4.3 The owner of real property and/or personal property from which a noise nuisance emanates shall be deemed to have permitted the noise nuisance.

Section 5 – Miscellaneous Provisions

- 5.1 Wherever the provisions of any By-Law or Town Planning Scheme administered by the Town impose overlapping or contradictory regulations over the control or prohibition of noise, or contain any restrictions covering any of the same subject matter contained herein, the most restrictive standard shall apply.
- 5.2 Severability - if any provision of this By-Law is held to be invalid by any Court of competent jurisdiction, the remaining provisions of the By-Law shall not be invalidated.
- 5.3 This by-Law shall come into force upon the passing thereof.
- 5.4 By-Law No. 464-94 is repealed with the passage of this By-Law.

DONE AND PASSED by the Council of the Town of Niverville in Open session assembled at in Manitoba, this day of , 2007.

Mayor

Chief Administrative Officer

Read a first time the 4th day of December 2007

Read a second time the 4th day of December, 2007

Read a third time the day of , 2007