

RURAL MUNICIPALITY OF ELTON
BY-LAW NO. 1375

BEING A BY-LAW OF THE RURAL MUNICIPALITY OF ELTON TO PROVIDE FOR THE REGULATION OF PUBLIC ORDER AND NOISES, TO BE KNOWN AS THE "NUISANCE BY-LAW".

WHEREAS Section 232(1) of The Municipal Act, C.C.S.M. 1996 c.M225 provides in part as follows:

- 232(1) A council may pass by-laws for municipal purposes respecting the following matters:
- (c) subject to section 233, activities or things in or on private property;
 - (f) property adjacent to highways or municipal roads, whether the property is publicly or privately owned;
 - (j) the sale and use of firecrackers and other fireworks, the use of rifles, guns, and other firearms, and the use of bows and arrows and other devices;
 - (k) wild and domestic animals and activities in relation to them, including by-laws differentiating on the basis of sex, breed, size or weight;

AND WHEREAS Section 233 of The Municipal Act, C.C.S.M. 1996 c.M225 provides in part as follows:

- 233 (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.

AND WHEREAS it is deemed advisable to exercise the powers set out in the said Sections of The Municipal Act;

NOW THEREFORE be it resolved as a By-Law of the Rural Municipality of Elton and it is hereby enacted as follows:

PART I: DEFINITIONS

1 **DEFINITIONS**

- (a) Unless otherwise expressly provided or unless the context otherwise requires, words and expressions in this by-law have the same meaning as the same words and expressions in The Municipal Act.
- (b) All reference herein to "he" shall include "she" unless the context thereof requires otherwise.
- (c) In this by-law:
 - (1) "RM" means The Rural Municipality of Elton or the area contained within the boundaries thereof
 - (2) "COUNCIL" means the Council of the RM.
 - (3) "OFFICER" means a peace officer, police officer or constable working for the Royal Canadian Mounted Police or any police force having jurisdiction within the boundaries of the RM, or any person appointed as a by-law enforcement officer of the RM unless the context thereof requires otherwise, and anyone acting or authorized to act on his behalf.
 - (4) "FIRE CHIEF" means the Fire Chief of any Emergency Response Department providing services under contract to the RM, and anyone acting or authorized to act on his behalf.
 - (5) "NOISE" means any loud or harsh sound.
 - (6) "NUISANCE" means an activity which interferes with the reasonable use of public or private property by any individual entitled to use such property.
 - (7) "PERSON" means any individual and includes firm, partnership, association, corporation, company, or group of persons.
 - (8) "RESIDENTIAL AREA" means any area where persons maintain a residence, including all areas zoned as Residential pursuant to the RM's Zoning By-law and all other areas where residences are maintained, unless otherwise specified in this by-law.
 - (9) "STREET" means any public right of way, including a highway, providing primary access to abutting property, used as a public thoroughfare for vehicles and pedestrians including streets under construction or repair, and where the context so requires, includes any square, park, commons, driveway, or parkway, and includes lanes and alleys.
 - (10) "VEHICLE" shall include any carriage, cart, wagon, sled, sleigh, motorcycle, motor vehicle, trailer, truck, bus, traction engine, bicycle, and any vehicle drawn, propelled or driven by any kind of power, including muscular power, but does not include the cars of electric, steam or diesel electric railways running only on rails.

PART II: PROHIBITED NOISES

- 2 Except where otherwise permitted by this By-law, no person shall make, continue or cause, or allow to be made or to be continued, by whatever means, any noise which does, or is likely to, annoy, disturb, injure, endanger or detract from the peace, health or safety of any other person.
- 3 Without restricting the generality of Section 2 hereof, the following shall be deemed likely to annoy, disturb, injure, endanger or detract from the peace, health or safety of any other person:
- (a) the sound caused by the discharge of a gun or other firearm, grenade, or any other explosive or noise making device, including a firecracker or other fireworks, unless specifically authorized by any Officer, Fire Chief or Member of Council;
 - (b) the sounding of any auditory warning device, including but not limited to a bell, burglar alarm, horn or siren, except when required by law or in order to give warning of the existence of a present or impending dangerous situation;
 - (c) the sound emanating from any musical instrument or loud speaker, when audible from a distance of fifteen metres (50 feet) or more, unless authorized by any Officer or under a permit issued by Council;
 - (d) the sound emanating from an improperly operated or maintained vehicle, including the squealing of tires, the operation of a vehicle with an improperly maintained or otherwise deficient exhaust system and those noises which emanate from a vehicle by reason of its state of disrepair;
 - (e) the sound resulting from the operation of an internal combustion engine, whether situated within a vehicle or otherwise, except where used in conjunction with an exhaust system and muffler which effectively prevents the emanating of loud or unusual noises;
 - (f) the sound emanating from excavation or construction work of any nature between 2200 hours of any day and 0700 hours of the next following day (10:00 p.m. - 7:00 a.m.), except in such locations where such conduct is permitted by applicable land use provisions, or where authorized by the Council;
 - (g) the sound resulting from the operation of any motorized lawn mower, snow clearing device, chain saw, motorized garden tiller or motorized toy in any residential area between 2200 hours of any day and 0700 hours of the next following day (10:00 p.m. - 7:00 a.m.). This provision shall apply notwithstanding Section 4 hereof;
 - (h) the sound created by the use or operation of any drum, horn, bell, radio or mechanical loudspeaker, or other instrument or device or sound-producing, sound-reproducing, or sound transmitting instrument or apparatus for the purposes of advertising or for attracting attention to any performance, show or sale or display of goods, wares or merchandise or which projects noise or sound into any street or other public place unless authorized by a permit issued by Council;
 - (i) any loud, blasphemous, abusive, obscene, or insulting language or singing or shouting in a boisterous manner;
 - (j) Any loud, excessive, or continual barking, howling, wailing, caterwauling or other sound caused by any domestic animal.

PART III: PERMITTED NOISES

4. None of the provisions of this by-law shall apply to:
- (a) sound resulting from an activity which is being carried on and is not in breach of any applicable land use provisions, and it is shown, to the satisfaction of any Officer or Council that:
 - i) the sound intensity level is not unreasonable, taking into consideration the type of activity allowed by the applicable land use provisions; and
 - ii) all reasonable steps have been taken by the owner of the property from which the sound is emanating in order to reduce the intensity;
 - (b) sound emanating from any military or other band or any parade operating under a permit authorized by the Council;

- (c) the use of any bell, whistle or similar sound in conjunction with the operation of the railway locomotive, engine or other rolling stock when used in accordance with other applicable laws and in particular The Railway Act of Canada;
- (d) snow clearing and road maintenance vehicles operated by the RM or the Province of Manitoba Department of Highways, or their designates;
- (e) sound or sirens emanating from any emergency vehicle while engaged in providing public service to the residents of, or visitors to the RM;
- (f) sound generated by emergency work of any nature when such work is authorized by any Officer or Fire Chief or authorized representative of the RM;
- (g) the use of any bell, chime, or similar sound for the purpose of calling persons to church and/or school services;
- (h) the rendering of Christmas Carols during the month of December in any year by the use or operation of sound producing devices or singing between 0700 hours and 2200 hours of any day (7:00 a.m. - 10:00 p.m.);
- (i) Any activity, work or undertaking which would otherwise be prohibited by the By-Law where a permit has been issued by the RM.

PART IV: NUISANCES

- 5. No person shall be allowed to stand in groups or to sit or lounge on chairs, benches or other things or to loiter in front of any business establishment or residence or in a street so as to cause any obstruction to the free use of said street or, by any manner of conduct, commit any public nuisance by collecting, loitering or standing as an idler on any of the streets or sidewalks of the RM, or in any public place within the RM, or on the step of or approach to a house or other premises open to a street whereby a member or members of the public are liable to be subjected to disturbance or annoyance provided that nothing contained in this Section shall be construed to extend to any person taking part in any lawful procession or gathering.
- 6. No person shall advertise any sale of merchandise, furniture or any other article, matter or thing by the ringing of any bell, blowing of any horn, crying, or creating any other discordant noise in any of the streets of the RM.
- 7. No person shall climb, bark, break, peel, cut, deface, injure or destroy the whole or any part of any tree, sapling, or shrub now growing or which may hereafter be planted by any person or by the RM in any street or public place of the RM, nor may any such tree be removed or cut down unless by permission of the RM.
- 8. No person shall cast, project or throw any stones or balls of snow or ice or other missiles dangerous to the public in any of the streets or public places of the RM.
- 9. No person shall use a bow and arrow, pellet or BB gun, fire or discharge any gun, fowling piece or firearm within the Villages of Douglas, Forrest or Justice.
- 10. An Officer, or an individual or business authorized to do so by any Officer, may discharge a firearm, or use a bow and arrow, pellet or BB gun in the execution of their duties.
- 11. No person shall indecently expose himself in any of the streets or public places of the RM, nor shall the plea of answering the call of Nature be considered a palliation of the offense.
- 12. No person shall post or put up any indecent placard, writing or picture or write any indecent or immoral words or make any indecent pictures or drawings, any of which may be morally offensive to modesty and delicacy, on any public or private building, wall, fence, sign, monument, post, sidewalk or pavement, in any of the streets or public places of the RM.
- 13. Every person found drunk or disorderly or drunk and disorderly in any street or public place, shall be liable to the penalties of this by-law.

PART V: PENALTIES

- 14. (a) Any person who contravenes, neglects, omits or fails to obey or observe any provision of this By-law is guilty of an offense and is liable on summary conviction to a fine not less than Five Hundred Dollars (\$500.00) to a maximum of Two Thousand Dollars (\$2,000.00) and costs on conviction or to imprisonment for a term not exceeding ninety (90) days or to both such a fine and such an imprisonment.
- (b) Where the contravention, refusal, neglect, omission or failure continues for more than one (1) day, the person is guilty of a separate offense for each day that it continues.

PART VI: PROVISIONS, REPEAL AND ENACTMENT

14. Wherever the provisions of any By-Law or Planning Scheme of the RM, or any By-Law or Planning Scheme administered by the RM 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.
15. Should any provision of this By-Law be held to be invalid by any Court of competent jurisdiction, the remaining provisions of the By-law shall not be invalidated.
16. (a) By-law No. 1041 and any by-law of the RM which contravenes the provisions herein set out is and are hereby repealed.
- (b) The repeal of the by-laws in the last preceding subsection mentioned shall not revive any By-law or any provision of any By-law repealed by them, nor shall the said repeal prevent the effect of any saving clause in the said by-laws or the application of any of the said by-laws or any other by-law or provision of law formerly in force to any transaction, matter or thing anterior to the said repeal to which they would otherwise apply.
- (c) The repeal of the said by-laws should not affect:
- i) Any penalty, forfeiture or liability incurred before the time of such repeal, or any proceedings for enforcing the same had, done, completed or pending at the time of such repeal; or
 - ii) Any action, suit, judgment, decree, certificate, execution, process, order, rule or any proceeding, matter or thing whatever, respecting the same had, done, made, entered, granted, completed, pending, existing or in force at the time of such repeal; or
 - iii) Any act, deed, right, title, interest, grant, assurance, registry, rule, regulation, contract, lien, charge, matter, or thing had, done, made, acquired, established, or existing at the time of such repeal; or
 - iv) Any office, appointment, commission, salary, allowance, security, duty, or any matter or thing appertaining thereto at the time of such repeal; or
 - v) Any bond, note, debenture, debt, or other obligation made, executed, or entered into by the RM at the time of such repeal.
- (d) The repeal of the said by-law(s) shall also not defeat, disturb, invalidate, or prejudicially affect any matter or thing whatsoever had, done, completed, existing or pending at the time of such repeal.

17. This by-law shall come into full force and take effect upon the passage thereof.

DONE AND PASSED by the Council of The Rural Municipality of Elton duly assembled this 29th day of July A.D. 2009.

RURAL MUNICIPALITY OF ELTON

Reeve

Chief Administrative Officer

Given first reading this 8th day of June, A.D. 2009.

Given second reading this 29th day of July, A.D. 2009.

Given third reading this 29th day of July, A.D. 2009.