

Town of Winnipeg Beach By-Law No. 16/2015

Being a By-law of the Town of Winnipeg Beach to regulate and prohibit Nuisance Noise

WHEREAS Section 232 and 233 of The Municipal 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;
- (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;
- (o) the enforcement of by-laws.

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 be it and it is hereby enacted as a by-law of the Town of Winnipeg Beach as follows:

1.0 TITLE

1.1 This By-law may be referred to as the "Town of Winnipeg Beach Nuisance Noise By-Law";

2.0 DEFINITIONS

2.1 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.

2.2 Wherever the singular or masculine are used throughout this By-law, the same shall be construed as meaning the plural or feminine or neutral, where the context so requires.

2.3 In this By-law

- (a) "CAO" means the Chief Administrative Officer of the Town or the CAO's designate.
- (b) "Chief of Police" means the Officer in Charge of the Gimli RCMP Detachment.

- (c) "Construction" includes erection, alteration, repair, dismantling and demolition of structures and includes structural maintenance, hammering, land clearing, moving of earth, rock or felled trees, rock breaking, grading, excavating, the laying of pipe or conduit whether above or below ground level, working with concrete, alteration or installation of any equipment, the structural installation of construction components or materials in any form whatsoever, the placing or removing of any construction related materials and includes any work in connection therewith.
- (d) "Emergency" means any occurrence or set of circumstances including actual or imminent physical trauma or property damage which demands immediate action.
- (e) "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.
- (f) "Fire Chief" means the Fire Chief of the Winnipeg Beach Fire Department as appointed from time to time.
- (g) "Noise" means any loud or harsh sound.
- (h) "Nuisance Noise" means any loud, unnecessary or unusual sound or any sound whatsoever which annoys, disturbs, injures, endangers or distracts from the comfort, repose, health, peace and/or safety of any reasonable person as determined by an Officer.
- (i) "Officer" means any Member of the Royal Canadian Mounted Police Force and any other police officer, police constable, BY-Law Enforcement Officer, designated officer or other person appointed and employed by the Town of Winnipeg Beach for preservation and maintenance of the public peace.
- (j) "Person" means any individual and includes firm, partnership, association, corporation, company or group of persons.
- (k) "Premises" means a building or buildings including the associated land.
- (l) "Residential Area" means any area where a person or persons maintain a residence, and without limiting the generality of the foregoing, shall include all areas zoned as Residential pursuant to the Town of Winnipeg Beach Zoning By-law and all other areas where residences are maintained.
- (m) "Sound" means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium and the description of sound may include any characteristic of such sound, including duration, intensity and frequency.
- (n) "Town" means the Town of Winnipeg Beach.

3.0 PROHIBITED NOISES

3.1 No Person shall make, continue to cause, or allow to be made or continued, by whatever means, any Nuisance Noise except where otherwise permitted by this By-law.

3.2 Without restricting the generality of Section 3.1 hereof, the following shall be deemed likely to be Nuisance Noise:

- (a) the Sound emanating from any musical instrument or loudspeaker, which creates a nuisance noise at a point of reception at any time, unless authorized by the Chief of Police or CAO;
- (b) The Sound emanating from excavation or construction work of any nature between the hours of 11:00 P.M. of any day and 7:00 A.M. of the next following day, except on Sundays when excavation or construction work is permitted between the hours of 9:00 A.M. and 9:00 P.M. only.
- (c) the Sound resulting from the use and/or operation of any power tool, motorized lawn mower, snow clearing device, chain saw, leaf blower, motorized garden tiller, weed/grass trimmer, motorized toy or similar device used outdoors in any Residential Area between 11:00 P.M. of any day and 7:00 A.M. of the next following day, except where such work is necessary to protect or prevent injury or danger to persons or property;
- (d) 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 re-producing, 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 except where such Noise or Sound has been prior authorized by the CAO;
- (e) any abusive, obscene or insulting language;

3.3 The property/owner, lessee, occupier or Person in control of a Premises is responsible for Nuisance Noise created by invitees, guests or other persons on the Premises in the same manner as the person actually creating the Nuisance Noise unless the property owner, lessee, occupier or Person in control of the Premises establishes that he exercised due diligence in a bona fide effort to control and abate such Nuisance Noise.

4.0 PERMITTED NOISES

4.1 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 the Officer or CAO, 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, lessee, occupier or Person in control of the property from which the Sound is emanating in order to reduce the intensity;
- (b) Sound emanating from any parade authorized by the Chief of Police or CAO;
- (c) Sound emanating from the Band Stand, any street festival, event, block party or similar function authorized by the CAO;

- (d) snow clearing, road maintenance and road construction vehicles and equipment operated by the Town or the Province of Manitoba or their agents and/or contractors;
- (e) grass and field of play maintenance vehicles and equipment operated by the Town and the Province of Manitoba or their agents and/or contractors;
- (f) Sound emanating from the clearing of snow from private parking lots and driveways;
- (g) Sound emanating from the Fire Hall alarm, or the sirens of any emergency vehicle while engaged in providing Emergency Work or responding to an Emergency or during testing of the Emergency Measures civil defense or warning siren;
- (h) Sound emanating from the sound system of the Winnipeg Beach Bandstand;
- (i) the use of any bell, chime or similar Sound for the purpose of calling persons to church and/or similar school services;
- (j) the use or operation of Sound producing devices during the month of December in any year for the emanating of Christmas carols;
- (k) the use, in a reasonable manner, of any apparatus, mechanism or device for the amplification of the human voice or of music on public property in connection with any duly approved public meeting, celebration or other public gathering;
- (l) the lighting and setting off of fireworks, by certified persons, as a public display or celebration with the approval of the Fire Chief;
- (m) Noise emanating from the discharge of consumer fireworks as regulated by Town of Winnipeg Beach Regulate use of Fireworks By-Law 4-2009 or any amendment or successor by-law thereof.

5.0 CONTRAVENTION & FINES

5.1 The Notice of Breach, as provided for in this Section, and to be issued by an Officer for contravention of this By-law shall be in the form as provided for in Schedule "A" attached hereto and forming part of this By-law. An Officer may also issue a Common Offence Notice of the Province of Manitoba for contravention of this By-law.

5.2 Any Person who contravenes this By-law shall be issued a Notice of Breach or a Common Offence Notice of the Province of Manitoba by the Officer and such Person may voluntarily dispose of the matter by attending at the Town Office during regular officer hours within thirty (30) days of the date of the Notice of Breach or Common Offence Notice and pay to the CAO the fine as set out in the Notice of Breach or Common Offence Notice which fine shall be as follows:

- (a) to a fine of not less than Two Hundred Dollars (\$200.00) and to a maximum of Five Hundred Dollars (\$500.00) for the first offense.
- (b) to a fine of not less than Five Hundred Dollars (\$500.00) and to a maximum of One Thousand Dollars (\$1,000) for the second offense and for each subsequent offense within twelve (12) months of the

first offense, and in default of payment, to imprisonment for not more than thirty (30) days.

5.3 If a Person served with a Notice of Breach or a Common Offence Notice of the Province of Manitoba under this By-law fails to pay the fine as set out in the Notice of Breach or the Common Offence Notice within the thirty (30) day period, the Officer shall lay an Information with respect to the contravention and a Summons will be issued for the Person to attend before a Provincial Court Judge, Magistrate or Justice of the Peace. Any Person found guilty for contravention of this By-law before a Provincial Court Judge, Magistrate or Justice of the Peace is subject to a minimum fine of Five Hundred Dollars (\$500.00) for a first offense and to a minimum fine of One Thousand Dollars (\$1,000.00) for the second offense and for each subsequent offense plus all applicable court costs.

5.4 A fine levied and costs charged under this By-law may be collected in any manner in which a tax may be collected or enforced under The Municipal Act.

6.0 SEVERABILITY

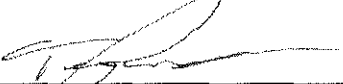
6.1 If any provision of this By-law is held to be invalid by any Court of competent jurisdiction, the remaining provisions of the By-law shall not be invalidated.

7.0 REPEAL


7.1 By-law No. 7/2007 of the Town of Winnipeg Beach is hereby repealed in its entirety.

DONE AND PASSED in Council duly assembled in the Town of Winnipeg Beach, in the Province of Manitoba this 9th day of December A.D., 2015.

TOWN OF WINNIPEG BEACH



MAYOR- Tony Pimentel



CAO- Kerry Lawless

Read a first time this 18th day of November A.D., 2015 (resolution # 377/2015)

Read a second time this 9th day of December A.D., 2015 (resolution # 405/2015).

Read a third time this 9th day of December A.D., 2015 (resolution # 406/2015)

SCHEDULE "A"
 To By-law No. 16/2015
NOTICE OF BREACH
 Town of Winnipeg Beach - Nuisance Noise By-law No. 16/2015

NUMBER _____ _____

TO:

Name: _____

Civic Address: _____

Mailing Address: _____

You are charged that on the _____ day of _____, 20____
 you did unlawfully -

01	Make, continue to cause, or allow to be made or continued by whatever means a Nuisance Noise.
02	The Sound emanating from any musical instrument or loudspeaker, which creates a nuisance noise at a point of reception at any time, unless authorized by the Chief of Police or CAO.
03	The sound emanating from excavation or construction work between the hours of 11:00 P.M. and 7:00 A.M. of the following day; or excavation or construction work on a Sunday except between the hours of 9:00 A.M. and 9:00 P.M.
04	The use and/or operation of a power tool, motorized lawn mower, snow clearing device, chain saw, leaf blower, motorized garden tiller, weed/grass trimmer, motorized toy or similar device used outdoors in a residential area between 11:00 P.M. and 7:00 A.M.
05	The use and/or operation of a drum, horn, bell, radio or mechanical loudspeaker or other instrument or device or sound producing, sound re-producing, or sound transmitting instrument or apparatus for the purpose 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.
06	abusive, obscene or insulting language

The property owner, lessee, occupier or person in control of a premises is responsible for Nuisance Noise created by invitees, guests or other persons on the premises in the same manner as the person actually creating the Nuisance Noise unless the property owner, lessee, occupier or person in control of the premises establishes that he/she exercised due diligence in a bona fide effort to control and abate such Nuisance Noise.

FINE AMOUNT: \$ _____,00 \$ _____,00	1 st offense, OR (min fine \$200 / max fine \$500) 2 nd or subsequent offense (min fine \$500 / max fine \$1,000)
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Disposition of this Charge may be made by attending the Administration offices of the Town of Winnipeg Beach during office hours (8:30 AM - 4:30 PM - Mon - Fri) within 30 days and pay the above noted fine.

If YOU FAIL TO DISPOSE OF THIS CHARGE within 30 days of the date on the Notice of Breach you are subject to, upon conviction before a Provincial Court Judge, Magistrate or Justice of the Peace, a minimum fine of \$500.00 for a first offense or a minimum fine of \$1,000.00 for a 2nd or subsequent offense plus all applicable costs.

Dated at Winnipeg Beach, in the Province of Manitoba this _____ day of _____, 20____.

 Officer, Town of Winnipeg Beach