

## VILLAGE OF BENITO

### BY-LAW NO. 08/04

Being a By-Law to regulate unnecessary and harmful noise within The Village of Benito.

WHEREAS Section 232 (1) of the Municipal Act S.M. 1996 c. 58 Cap. M225, provides as follows:

(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; .....

(c) subject to section 233, activities or things in or on private property"

AND WHEREAS Section 233 of the Municipal Act S.M. 1996 c. 58 Cap.M225, provides as follows:

"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.....and vibrations"

AND WHEREAS it is deemed advisable to exercise the powers set out in the Municipal Act as excessive sound is a serious hazard to the public health and welfare, safety and quality of life and the public has a right to and should be ensured an environment free from excessive sound that may be prejudicial to their health or welfare or safety or diminish the quality of life.

NOW THEREFORE be it enacted as a by-law of The Village of Benito as follows:

1. THAT this by-law be referred to as The Village of Benito Noise Control By-Law;
2. Definitions:
  - a. Village means The Village of Benito.
  - b. Commercial, Industrial or Residential District means the various zoning districts as defined in the by-laws relating to zoning and planning schemes of The Village of Benito.
  - c. Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage threatened or caused by an emergency.
  - d. 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.
  - e. Motor vehicle means an automobile, motorcycle, truck or any other vehicle propelled or driven otherwise than by muscular power.
  - f. Motorized Recreational vehicles means all recreational motorized vehicles whether or not duly licenced and registered, including, but not limited to, commercial or non-commercial racing vehicles, motorcycles. Go-carts, snow-mobiles, trail bikes, amphibious craft and motor boats.
  - g. Noise Nuisance means any unreasonably loud or unusual sound or any sounds which are likely to, or annoy, injure, or disturb the health, peace, or safety of any person.
  - h. Powered Model Vehicle means any self-propelled airborne, water-borne or land-borne airplane, vessel or vehicle, which is not designed to carry a

person including, but not limited to, any model airplane, boat, car or rocket.

- i. Sound means oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and ramification of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.
3. Except to the extent permitted by this by-law, no person shall make, continue, or cause to be made or continued, any noise nuisance, and specifically the following acts, among others, and the causing thereof, are declared to be in violation of this by-law, namely:
    - a. No person owning or possessing or harboring any animal or bird shall allow it to create a noise nuisance.
    - b. Except to the extent, as may hereinafter be permitted by this by-law, no person shall operate or permit the operation of any power or manual equipment, machinery, devise or motor vehicle in such a manner as to create a noise nuisance.
    - c. (i) 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 11:00 p.m. and 7:00 a.m. of the following day.  
(ii) No person shall operate or permit the operation of any mechanical powered saw, drill, sander, grinder, lawn or garden tool, snowblower, or similar device used outdoors, to create a noise nuisance at the point of reception at any time except between the hours of 7:00 a.m. and 11:00 p.m. on weekdays and Saturdays; and between the hours of 10:00 a.m. and 11:00 p.m. on Sundays.
    - d. No person shall operate, play or permit the operation or playing of any radio, television, phonograph, drum, musical instrument, loudspeaker, public address system, sound amplifier or similar device in a residential district which produces, reproduces or amplifies sound in such a manner as to create a noise nuisance at a point of reception at any time.
    - e. No person shall operate, play or permit the operation or playing of any radio, television, phonograph, drum, musical instrument, loudspeaker, public address system, sound amplifier or similar device in a commercial district which produces, reproduces or amplifies sound in such a manner as to create a noise nuisance at a point of reception, unless used for the purpose of advertising some particular or other public object and unless a permit has been issued by the Village of Benito.
    - f. No person shall by shouting, or otherwise, whether by amplified sound or other, cause a noise nuisance in the Village.
    - g. No person shall repair, rebuild, modify or test any motor vehicle, motorcycle, motor boat, outboard motor or motorized recreational vehicle in such a manner as to create a noise nuisance at a point of reception between the hours of 11:00 p.m. and 7:00 a.m. of the following day on weekdays and Saturdays and at no time on Sundays.
  4. Exceptions:  
The provisions of this by-law shall not apply to:
    - a. 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 purpose.
    - b. Work performed in respect of the maintenance, construction or demolition of a public right-of-way or public space.
    - c. Any military or other bands or any parade, operating under written permit from the Village of Benito.
    - d. Any vehicle of the police or fire department or any ambulance or any public service or emergency vehicle while answering a call.
    - e. The ringing of church or school bells.

- f. The using or operating of sound producing devises during the month of December in any year for the rendering of Christmas carols.
  - g. Concerts, circuses, fairs, parades or any other like activity where a permit has been issued by the Village of Benito.
  - h. Any activity, work or undertaking which would otherwise be prohibited by this by-law where a permit has been issued by the Village of Benito.
  - i. Aircraft.
5. This by-law shall be administered by a Peace Officer in and for the Province of Manitoba, or by a By-Law Enforcement Officer appointed by the Village of Benito.
  6. Penalty - shall be in accordance with Section 249 of the Municipal Act and shall include any other related Court costs.
  7. Wherever the provisions of any by-law of Village Planning Scheme of the Village, or any by-law or Village Planning Scheme administered by the Village impose overlapping or contradictory regulations over the control or prohibition of noise, or contain any restriction covering any of the same subject matter contained herein, the most restrictive standard shall apply.
  8. 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.
  9. By-Law No. 08/84 is hereby repealed.

DONE AND PASSED by the Council of the Village of Benito in open session assembled at Benito, in the Province of Manitoba, this \_\_\_day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
William C. Schneider  
Mayor

\_\_\_\_\_  
Karon Harness  
Chief Administrative Officer

Read a first time this \_\_\_day of \_\_\_\_\_, 2004.  
Read a second time this \_\_\_day of \_\_\_\_\_, 2004.  
Read a third time this \_\_\_day of \_\_\_\_\_, 2004.