

BY-LAW No. 1070

A By-Law Of The Village of Delburne In The Province Of Alberta For The Purpose Of Prohibiting, Eliminating Or Abating Noise.

WHEREAS the Municipal Government Act, S.A. 2000, c.M-26, as amended, provides that the Council of a Municipality may pass a By-law respecting the safety, health and welfare of people and the protection of people and property, respecting people, activities and things in, or near a public place or place that is open to the public, and respecting nuisances;

AND WHEREAS the Highway Traffic Act R.S.A. 1980, c.H-7, as amended, provides that the Council of a Municipality may make by-laws defining what constitutes objectionable Noise, devising a system or method of determining or measuring that Noise, and prohibiting the operation of Motor Vehicles which in any manner make objectionable Noise;

NOW THEREFORE THE COUNCIL OF THE Village of Delburne in the Province of Alberta, duly assembled, enacts as follows:

1. SECTION 1 - SHORT TITLE

This By-law may be cited as the Village of Delburne "Noise Control By-law".

2. SECTION 2 - DEFINITIONS

- 2.1 **"By-law Enforcement Officer"** means a By-law Enforcement Officer appointed by the Village of Delburne pursuant to the Municipal Government Act, S.A. 2000 c. M-26, as amended, to enforce the bylaws of the Village of Delburne, and includes a member of the Royal Canadian Mounted Police and, when authorized, a Special Constable.
- 2.2 **"Construction Equipment"** includes a riveting machine, concrete mixer, gravel crusher, steam shovel, trenching machine, dragline, backhoe, air or steam compressor, jack-hammer or pneumatic drill, bulldozer, front-end loader, motor scraper, motor grader or any other tool, device, or machine of a noisy nature.
- 2.3 **"Construction Noise"** means Noise caused by Construction Equipment.
- 2.4 **"Council"** means the Council of the Village of Delburne.
- 2.5 **"Development Officer"** means a Development Officer or designate for the Village of Delburne and whatever subsequent title may be conferred on that officer by Council or Statute.

- 2.6 **"Holiday"** means any day declared as such by Municipal, Provincial or Federal authority and includes Sundays.
- 2.7 **"Land Use Bylaw"** shall mean the Village of Delburne's Land Use Bylaw No. 997 as amended from time to time and any Bylaw passed in substitution for or in addition to Bylaw 997.
- 2.8 **"Motor Vehicle"** means Motor Vehicle as defined in the Highway Traffic Act, R.S.A. 1980, c.H-7, as amended.
- 2.9 **"Noise"** means any sound which either annoys or disturbs Persons, or which injures, endangers or detracts from the comfort, repose, health, peace or safety of Persons within the boundary of the Village of Delburne.
- 2.10 **"Off-Highway Vehicle"** means an Off-Highway Vehicles as defined in the Off-Highway Vehicle Act, R.S.A. 1980, c.0-4, as amended.
- 2.11 **"Person"** includes an individual, partnership, corporation, trustee, executor or administrator.
- 2.12 **"Violation Ticket"** means a ticket issued pursuant to Part II of the Provincial Offenses Procedures Act, R.S.A. 1988, c.P-21.5, as amended, and Regulations thereunder.

3. SECTION 3 - VIOLATIONS

- 3.1 Except to the extent permitted by this By-law, no Person shall cause or permit any other Person to:
- 3.1.1 cause a Noise within the Village of Delburne;
 - 3.1.2 operate or permit any other Person to operate within the Village of Delburne, a Motor Vehicle which causes a Noise.
 - 3.1.3 operate or permit any other Person to operate within the Village of Delburne, an Off-Highway Vehicle which causes a Noise.
- 3.2 No Person shall allow property under their ownership or control to be used in such a way that there is Noise originating from the property.
- 3.3 A By-law Enforcement Officer may direct any Person who has caused or made a Noise, or any Person who owns or controls property from which Noise has originated, to abate or eliminate the Noise. Such a direction may be either verbal or written.

3.4 Where an activity which is not specifically prohibited by any federal, provincial or municipal laws or regulations, including this By-law and which involve reacting or making a sound which:

3.4.1 is or may become;

3.4.2 creates or produces or may create or produce;

a Noise, a Person engaging in such an activity shall do so in such a manner as to create as little sound as practicable under the circumstances.

4. SECTION 4 - PERMITS AND NON-APPLICATION OF BY-LAW

4.1 The Development Officer may, upon written request, issue permission in writing to a Person for the purpose of suspending the provisions of this By-law, and the written permission shall specify the dates and hours during which Noise may occur (the "Permit").

4.2 The Development Officer may refuse to issue a Permit, or impose any term or condition upon a Permit.

4.3 The applicants for a Permit may appeal either:

(a) the refusal of an issuance of a Permit; or

(b) a condition(s) of the Permit;

to Council within thirty (30) days of the receipt of the refusal, or the receipt of the issuance of the Permit.

4.4 On appeal under either Clause 4.3(a) or 4.3(b), Council may refuse a Permit, confirm a Permit, issue a Permit upon any terms or conditions, or vary a term(s) of condition(s) of a Permit. The decision of Council is final.

4.5 Any such Permit issued shall be produced to a By-law Enforcement Officer upon demand.

4.6 Persons owning or controlling Construction Equipment, and Persons owning or controlling land on which Construction Equipment is being operated shall be exempt from the provisions of this By-law if:

4.6.1 the Noise is generated pursuant to work done in the normal manner to that industry;

4.6.2 the Noise is generated between the hours of 7:00 a.m. and 10:00 p.m. of any day excluding Holidays and between the hours of 10:00 a.m. and 10:00 p.m. on Holidays; and

4.6.3 all necessary federal, provincial and municipal permits, licenses and approvals have been obtained and the work is not contrary to any federal, provincial or municipal laws or regulations.

4.7 This By-law does not Apply:

4.7.1 to work carried on by the Village of Delburne or its agents, contractors, servants or employees, acting within the scope of their agency, contract, or employment, as the case may be; or

4.7.2 to the performance of any industrial activity by any Person on land where:

4.7.2.1 the industrial activity is:

- (a) a permitted use within Districts and under the Land Use Bylaw;
- (b) is an approved discretionary use within Districts and under the Land Use Bylaw; or
- (c) is a non-conforming use as defined in the Municipal Government Act;

the Noise is generated pursuant to work done in the normal manner to that end; and

4.7.2.2 the work does not otherwise contravene any federal, provincial or municipal laws or regulations.

4.7.3 to Persons using domestic equipment including lawnmowers, snow blowers, garden tillers and built-in vacuum cleaners which are vented to the outside, and Persons owning or controlling property upon which such equipment is used if:

4.7.3.1 the Noise is of a temporary or intermittent nature;

4.7.3.2 the equipment is properly maintained and operated in a normal manner for that type of equipment; and

4.7.3.3 the Noise occurs between the hours of 7:00 a.m. and 10:00 p.m. of any day and between the hours of 10:00 a.m. and 10:00 p.m. on Holidays;

4.7.4 to Persons using air conditioning and cooling units in either domestic or commercial use if the units are properly maintained and are operated in a normal manner.

5. SECTION 5 - AUTHORIZATION TO INSPECT

5.1 A By-law Enforcement Officer may enter any land, building or premises to inspect for conditions that may constitute a contravention of this By-law.

5.1 A By-law Enforcement Officer has reasonable and probable grounds to believe a violation of this Bylaw exists, he may enter any dwelling house or property with a warrant and may seize any articles making or creating a Noise and any articles he believes may have been used in the commission of any violation of this Bylaw.

6. SECTION 6 - PENALTIES

6.1 Any Person who contravenes any provision of this By-law is guilty of an offence and is liable to a penalty as specified in Schedule "A" to this Bylaw.

7. SECTION 7 - VIOLATION TICKETS

7.1 A By-law Enforcement Officer is hereby authorized and empowered to issue a Violation Ticket to any Person who the By-law Enforcement Officer believes has contravened any provision of this By-law.

7.2 Where a contravention of this Bylaw is of a continuing nature, further Violation Tickets may be issued by a Bylaw Enforcement Officer in respect of each day or part of day on which it continues.

8. SECTION 8 - SEVERABILITY PROVISION

8.1 Should any provision of this By-law be invalid, then such provision shall be severed and the remaining By-law shall be maintained.

9. SECTION 9 - EFFECTIVE DATE

9.1 This By-law shall come into effect upon third and final reading.

Read a first time this 9th day of February, 2010

Read a second time with amendments this 27th day of April, 2010

Read a third time this 27th day of April, 2010

Bob Manning, Mayor

Karen M. Fegan, CT, CAO

Schedule "A"

1. Fifty Dollars (\$50.00) for a first Offence; and
2. Two Hundred and Fifty Dollars (\$250.00) for a second Offence, if:
 - a. the Offence is a contravention of the same provision of the Bylaw which was contravened resulting in the first, or prior, Offence; and
 - b. the Offence is committed within twelve (12) months of committing the first, or prior, Offence.
3. Five Hundred Dollars (\$500.00) for a third and subsequent Offence, if:
 - a. the Offence is a contravention of the same provision of the Bylaw which was contravened resulting in the second, or prior, Offence; and
 - b. the Offence is committed within twelve (12) months of committing the second, or prior, Offence.