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# Town of Digby By-law #2014-01

## Noise By-Law

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### Title

1. This By-Law is entitled the “Noise By-Law”.

### Definitions

2. In this By-law:
  - (1) "**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 related work, but does not include blasting;
  - (2) “**construction equipment**” means any equipment or device designed and intended for use in construction or material handling including but not limited to air compressors, air tracks, pile drivers, pneumatic or hydraulic tools, bulldozers, tractors, excavators, trenchers, cranes, derricks, loaders, backhoes, scrapers, pavers, generators, off-highway haulers or trucks, ditchers, compactors and rollers, pumps, concrete mixers, graders and other material handling equipment;
  - (3) “**Council**” means the Council of the Municipality of the Town of Digby.
  - (4) “**emergency response personnel**” includes police, fire departments or brigades, registered emergency services providers, search and rescue personnel, provincial, regional or municipal Emergency Measures Organizations, ambulance or emergency health services providers and includes volunteer or military personnel responding to an apparent condition of emergency.

- (5) "**motor vehicle**" includes an automobile, motorcycle and any other vehicle propelled or driven otherwise than by muscular, gravitational or wind power, except a motorized wheelchair, a vehicle running only upon rails, a farm tractor or a self-propelled implement of husbandry, and an off-highway vehicle as defined from time to time in the *Off-Highway Vehicles Act*;
- (6) "**Municipality**" means the Municipality of the Town of Digby.
- (7) "**point of reception**" means any point on premises containing a dwelling unit where sound, originating from other premises, including other dwelling units, is received;
- (8) "**public address system**" means any system comprised of one or more of the following and in any combination: loudspeaker, amplifier, microphone, turntable, reproducer, receiver or tuner, where such equipment is part of a system used to reproduce or amplify sound;
- (9) "**recreational vehicle or boat**" means an off-highway vehicle as defined in the *Off-Highway Vehicles Act* and any motorized water-craft except a commercial fishing boat or a boat used as a ferry or in a commercial enterprise.
- (10) "**unruly behaviour**" means offensive or anti-social behavior including yelling or shouting, screaming, fighting or causing loud noises in other manners, use of profane language, verbal or physical aggression or spitting.

### **Prohibitions and Interpretations**

3. No person shall engage in any activity which is likely to generate noise or sound that unreasonably disturbs the peace and tranquility of a neighbourhood. For the purpose of this section, evidence that one neighbour is unreasonably disturbed by a noise is prima facie evidence that the neighbourhood is unreasonably disturbed by the noise.
4. Without limiting the generality of section [3], the activities or noises listed in Schedule "A" during the proscribed times as set out therein are deemed to be activities which are likely to generate noise or sound that unreasonably disturbs the peace and tranquility of a neighbourhood if the sound resulting from the activity is audible at a point of reception.

5. No person shall generate, or cause or permit to be generated, a noise or sound that is measurable in A-weighted sound pressure level at a point of reception
  - (1) in excess of 55 dBA, before 7:00 a.m. or after 11:00 p.m.;
  - (2) in excess of 65 dBA, at other times.

### **Fixed Exemptions**

6. This By-Law does not apply to:
  - (1) emergency response personnel engaged in the execution of their emergency response duties; or
  - (2) persons acting at the request of emergency response personnel during an actual or apparent emergency condition.

and, without limiting the generality of the foregoing, noises caused by emergency response vehicles and air ambulances are specifically exempt from prosecution.

7. Notwithstanding any other provisions of this By-law, this By-law shall not apply to or proscribe:
  - (1) the emission of sound in connection with any organized traditional, festive or religious activity celebrating:
    - (a) Canada Day;
    - (b) New Year's Eve; or
    - (c) religious holidays;
  - (2) the emission of sound in connection with calls to worship, ringing of bells at places of religious worship, or services of religious worship;
  - (3) noise caused by the Municipality, the Government of Canada, the Province of Nova Scotia, the Nova Scotia Power Corporation, and telecommunication companies and their contractors and employees when acting in the reasonable execution of their duties between 7:00 a.m. and 11:00 p.m. in the day;

- (4) noises in connection with organized athletic or recreational activities in municipal or public park areas, arenas or community centres between 7:00 a.m. and 11:00 p.m.;
- (5) noises from activities and events of annual festivals, parades, street dances, rallies, or other community activities funded, sponsored or licensed by the Municipality between 7:00 a.m. and 1:00 a.m. in Commercial Zones as designated in the Land Use By-law and/or Municipal owned property;
- (6) noises from outdoor concerts / entertainment which are not referenced in Section 7 (5) above, are subject to the terms and conditions of the Special Events Permits issued by the Town under the Town's Licensing By-law in Commercial Zones as designated in the Land Use By-law and/or Municipal owned property .
- (7) noises emitted by audible pedestrian signals;

#### **Grant Of Exemptions By Council**

8. (a) Any person may make application to Council to be granted an exemption from any of the provisions of this By-Law with respect to the emission of noise from an industrial, institutional, commercial or community activity for which that person might otherwise be prosecuted.
- (b) Any person(s), company or organization applying for an exemption under this Section must pay an application fee of fifty dollars [\$50.00] [to accompany the application] which can be waived by Council.
- (c) Council, by resolution, may refuse to grant the exemption or may grant the exemption applied for or any exemption of lesser effect. Any exemption so granted shall:
  - (1) specify a time period of not greater than **6 months** during which the exemption shall be effective;
  - (2) shall be confirmed in writing by the CAO OR By-Law Enforcement Officer before becoming effective; and

- (3) shall include such terms and conditions as Council deems appropriate.
9. In deciding whether or not to grant an exemption under section **[8]** or in determining terms or conditions of the exemption, Council shall give consideration to:
  - (1) the social or economic benefit of the proposed activity to the Town;
  - (2) the volume, nature, duration and consistency of noise emission from the proposed activity;
  - (3) the proximity and nature of abutting or adjacent land uses;
  - (4) the hours of operation of the proposed activity;
  - (5) any other factor relevant to balancing the interests of the applicant in the proposed activity against the interests of those persons who might be disturbed by the proposed activity.
10. All exemptions, renewals of exemptions, or amendments expanding the scope of an exemption shall only be granted after a public hearing at which Council shall give the applicant and any person interested in the application an opportunity to be heard.
11. Seven **[7]** days notice of the time, date and purpose of a public hearing pursuant to section **[10]**, shall be mailed by the applicant to the assessed owner or owners, as shown in the records of the Assessment Office, of each property which contains a building located within **[150 meters]** of the property which will be the subject of the hearing, except that where the exemption is sought for an outdoor event not conducted at a fixed location, notice may be given by advertisement, of not less than **[25 square cm.]** in size, in a local newspaper of mass circulation.
12. Any contravention of the terms or conditions of an exemption pursuant to section **[8]** shall constitute a contravention of this By-Law. In addition to any other available remedies for such contravention, the CAO OR By-Law Enforcement Officer may on reasonable and probable grounds, without a hearing, suspend an exemption for a period of up to thirty days **[30 days]** pending Council review of the exemption.

13. Any exemption pursuant to section [8] shall be reviewable by Council at any time upon seven [7] days notice to the person exempted, and Council is free to revoke, suspend or restrict the exemption with or without cause having regard to the criteria set forth in section [9], without giving notice to adjacent owners in accordance with section [10].

**Penalty**

14. Any person who contravenes any provision of this By-Law is punishable on summary conviction by a fine of not less than **two hundred dollars [\$200.00]** and to imprisonment of not more than thirty days [30] in default of payment thereof.

15. Any person who contravenes sections **3, 4 or 5** of this By-Law and who is given notice of the contravention may pay to the Town, at the place specified in the notice, the sum of **\$50.00 pursuant to Payment in Lieu of Prosecution Policy** within **14** days of the date of the notice and shall there-by avoid prosecution for that contravention.

**Repeal**

16. **By-Law Number #2000-11 of the Town of Digby entitled By-laws and Regulations Prevention of Excessive Noise By-law is hereby repealed and replaced by this By-Law.**

**Clerk's Annotation For Official By-Law Book**

Date of first reading: 02 June 2014

Date of advertisement of Notice of Intent to Consider: 11 June 2014

Date of second reading: 07 July 2014

\*Date of advertisement of Passage of By-Law: 17 July 2014

Date of mailing to Minister a certified copy of By-Law: 17 July 2014

I certify that this **NOISE BY-LAW #2014-01** was adopted by Council and published as indicated above.

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Edwin T. Ossinger, C.A.O., Clerk

17 July 2014

Date

\* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

## Schedule "A"

### **Part 1: Activities proscribed at all times:**

1. The operation of any combustion engine or pneumatic device without an effective exhaust or intake muffling device in good working order and in constant operation;
2. The operation of a vehicle or a vehicle with a trailer resulting in banging, clanking, squealing or other like sounds due to an improperly secured load or equipment or inadequate maintenance;
3. The operation of a motor vehicle horn or other warning device except where required or authorized by law or in accordance with good safety practices;
4. The detonation of fireworks or explosive devices not used in construction or quarrying;
5. The discharge of firearms except when used as a signaling device in a sporting competition;
6. Persistent barking, howling or other persistent noise-making by a dog or other animal owned or possessed by the occupant of premises;
7. Unruly behaviour
8. The operation of an engine or motor in, or on, any motor vehicle or item of attached auxiliary equipment for a continuous period exceeding five minutes unless:
  - (1) the original equipment manufacturer specifically recommends a longer idling period for normal and efficient operation of the motor vehicle in which case such recommended period shall not be exceeded;
  - (2) operation of such engine or motor is essential to a basic function of the vehicle or equipment, including but not limited to, operation of ready-mixed concrete trucks, lift platforms and refuse compactors;
  - (3) weather conditions justify the use of heating or refrigerating systems powered by the motor or engine for the safety and welfare of the operator, passengers or animals, or the preservation of perishable cargo, and where the vehicle is stationary for purposes of delivery or loading;

- (4) prevailing low temperatures make longer idling periods necessary immediately after starting the motor or engine;
  - (5) the idling is for the purpose of cleaning and flushing the radiator and associated circulation system for seasonal change of antifreeze, cleaning of the fuel system, carburetor or the like, when such work is performed other than for profit.
9. The operation of any item of construction equipment in a residential area without effective muffling devices in good working order and in constant operation;

**Part 2: Activities proscribed on a Monday, Tuesday, Wednesday, Thursday, or Friday before 7:00 a.m. or after 11:00 p.m.; on a Saturday before 8:00 a.m. and after 11:00 p.m.; and on a Sunday, Statutory Holiday or Remembrance Day before 9:00 a.m. and after 9:00 p.m.:**

1. The operation in the outdoors of any power tool for domestic purposes other than snow removal or gardening;
2. The loading or unloading of any containers, products, materials or refuse with the exception of private household effects;
3. The use or operation of any commercial vacuuming equipment such as rug cleaning equipment;
4. The operation of any public address system, television set, disc player, tape deck, phonograph, or radio in a manner such that the sound from the equipment being operated is audible beyond the bounds of the property from which the noise is emitted;
5. The operation of any motorized conveyance other than on a street or other place intended for its operation;
6. The operation of snow or ice making equipment;
7. The use or operation of construction equipment, except where such equipment is used or operated on any highways;



8. The operation of a power assisted hang glider, parafoil or hot-air balloon;
9. Construction and the operation of any equipment in connection with construction;
10. The operation of any powered rail car including but not limited to refrigeration cars, locomotives or self-propelled passenger cars, while stationery on property not owned or controlled by a railway governed by the Canada Railway Act.

**Part 3: Activities proscribed on a Monday, Tuesday, Wednesday, Thursday, or Friday before 7:00 a.m. or after 9:30 p.m.; on a Saturday before 8:00 a.m. or after 7:00 p.m.; and on a Sunday, Statutory Holiday or Remembrance Day at all times during any such day:**

1. [Subject to subsection [(7)] of section [7] of the By-Law,] the operation of any refrigeration unit which is attached to a refrigeration trailer unless the refrigeration trailer is in motion;
2. The operation of a garborator, solid waste bulk lift, refuse compacting equipment or hydraulic dumpster associated with a commercial enterprise;
3. The operation of a commercial car wash;
4. All selling or advertising by shouting or outcry or amplified sound;
5. The venting, release or pressure relief of air, steam or other gaseous material, product or compound from any autoclave, boiler pressure vessel, pipe, valve, machine, device or system;