

BY-LAW NO. 2017-6

of the Fisher River Cree Nation

A By-Law for the Prevention of Noise

WHEREAS the Council of the Fisher River Cree Nation desires to make a By-Law governing the prevention of noise, with respect to any matter arising out of or ancillary to the exercise of powers under section 81 of the *Indian Act*, R.S.C., 1985, c. I-5 and for the imposition of a penalty for a violation thereof;

AND WHEREAS the Council of the Fisher River Cree Nation is empowered to make such By-Law pursuant to paragraphs 81(1) (d), (q) and (r) of the *Indian Act*;

AND WHEREAS it is considered to be expedient and necessary for the benefit, comfort and safety of the inhabitants of the Fisher River Cree Nation to provide for the prevention of noise on the reserve;

NOW THEREFORE the Council of the Fisher River Cree Nation hereby makes the following By-Law:

Short Title

1. This By-Law may be cited as the "*Fisher River Cree Nation Noise Control By-Law.*"

Interpretation

2. In this By-Law,

"*band*" means the Fisher River Cree Nation;

"*Community Safety Officer*" means any person appointed by Council or contracted by Council from time to time for the purpose of administering, applying and enforcing this By-Law, and includes any Special or Band Constable, assistant or any person appointed by Council to assist in carrying out the provisions herein;

"*construction*" includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, moving, land clearing, earth moving, grading, excavating, the laying of pipe and conduit whether above or below ground level, street and highway building, concreting, equipment installation and alteration and the structural installation of construction components and materials in any form or for any purpose, and includes any work in connection therewith;

"*construction equipment*" means any equipment or device designed and intended for use in construction or material handling, including but not limited to, air compressors, pile drivers, pneumatic or hydraulic tools, bulldozers, tractors, excavators, trenchers, cranes, derricks, loaders, scrapers, pavers, generators, off-highway haulers or trucks, ditchers,

compactors and rollers, pumps, concrete mixers, graders or other material handling equipment;

“*conveyance*” includes a vehicle and any other device employed to transport a person or persons or goods from place to place but does not include any such device or vehicle if operated only within the premises of a person;

“*Council*” means the Chief and Council of the Fisher River Cree Nation;

“*motor vehicle*” includes an automobile, motorcycle, and any other vehicle propelled or driven otherwise than by muscular power; but does not include the cars of electric or steam railways, or other motor vehicles running only upon rails, or a motorized snow vehicle, traction engine, farm tractor, self-propelled implement of husbandry or road-building machine within the meaning of the *Highway Traffic Act*, C.C.S.M. c. H60;

“*noise*” means unwanted sound that materially impairs the use and enjoyment of a person's property, or that prejudicially affects a person's health, comfort or convenience or the public health, safety or welfare of the reserve community, but does not include a sound to the extent it is unavoidably necessary for carrying on any business or other means of livelihood authorized by the Council;

“*point of reception*” means any point on the premises of a person where sound or vibration originating from other than those premises is received;

“*person*” includes a corporation;

“*reserve*” means the reserves of the Fisher River Cree Nation and includes the Fisher River Indian Reserve 44 and 44A and any other reserve lands under the authority of Council.

Zones

3. All lands within the geographic limit of the reserve of Fisher River Cree Nation shall be considered as the area affected by this By-Law.

General prohibitions

4. No person shall emit or cause or permit the emission of sound resulting from an act listed herein, and which sound is clearly audible at a point of reception:
 - a) racing of any motorized conveyance other than in a racing event regulated by
 - b) law;
 - c) the operation of a motor vehicle in such a way that the tires squeal;
 - d) 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;

- e) the operation of vehicle or a vehicle with a trailer resulting in banging, clanking, squealing or other like sounds due to improperly secured load or equipment, or inadequate maintenance;
- f) the operation of motor vehicle horn or other warning device except where required or authorized by law or in accordance with good safety practices;
- g) the operation of any item of construction equipment within the reserve without effective muffling devices in good working order and in constant operation;

Prohibitions by time and place

- 5. No person shall emit or cause or permit the emission of sound resulting from any act listed in the attached "Table 1" if clearly audible at a point of reception located within the reserve within the prohibited time as shown.

Exemption

- 6. Notwithstanding any other provision of this By-Law, it shall be lawful to emit or cause or permit the emission of sound or vibration in connection with emergency measures undertaken:
 - a) for the immediate health, safety or welfare of the inhabitants or any of them; or
 - b) for the preservation or restoration of property;

unless such sound or vibration is clearly of a longer duration or nature more disturbing, than is reasonably necessary for the accomplishment of such emergency purpose.

Grant of exemption by Council

- 7. Notwithstanding anything contained in this By-Law, any person may make application to Council to be granted an exemption from any of the provision of this By-Law with respect to any source of sound or vibration for which he might be prosecuted and Council may, by resolution, refuse to grant any exemption or may grant the exemption applied for or any exemption of lesser effect and any exemption granted shall specify the time period, not in excess of six months, during which it is effective and may contain such terms and conditions as Council sees fit.

Decision

- 8. In deciding whether to grant the exemption, Council shall give the applicant and any person opposed to the application an opportunity to be heard and may consider such other matters as it sees fit.

Reapplication

9. Where an application made under section 7 is refused, the Council is not required to consider any further application by that person for a period of one (1) year from the date of the refusal, unless the applicant can show that there has been a material change of circumstances.

Breach

10. Breach by the applicant of any of the terms or conditions of any exemption granted by Council shall render the exemption null and void.

Offence

- 11.1 Everyone who creates or causes a noise contrary to the provisions of this By-Law is guilty of an offence.
- 11.2 The Community Safety Officer may order any person who is causing or who threatens to cause a noise on the reserve to refrain from causing the noise or to abate the noise within such period as is reasonable in the circumstances.
- 11.3 In determining whether a period fixed under subsection (2) was reasonable in the circumstances, the Community Safety Officer shall take into account
 - a) the nature and extent of the noise;
 - b) the methods available to abate the noise; and
 - c) the effect of the order on any business or means of livelihood of the person who is the subject of an order.

Enforcement

- 12.1 Where a person who has been ordered to refrain from causing a noise or to abate a noise within a specified period, fails or refuses to comply with the order, the Community Safety Officer may take such reasonable measures as are necessary to abate the noise.
- 12.2 A person who fails or refuses to comply with an order made under this By-Law or who resists or interferes with the Community Safety Officer acting under this By-Law, commits an offence.

Exception

13. Notwithstanding any other provision of this By-Law, Council may alter or suspend the prohibitions by time and prohibited periods listed in the attached "Table 1" on any designated day or days.

Penalty


14. A person who commits an offence under this By-Law is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding thirty days, or to both.

Coming Into Force

15. This By-Law shall come into force upon it being first published pursuant to subsection 86(1) of the *Indian Act*.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Fisher River Cree Nation this 23rd day of May, 2017.


Voting in favour of the By-Law are the following members of the Council:



Chief David Crate



Councillor Carl Cochrane



Councillor Shirley Cochrane



Councillor Darrell Thaddeus



Councillor Vince Crate

Being the majority of those members of the Council of the Fisher River Cree Nation present at the aforesaid meeting of the Council.

The quorum of the Council is three members.

Number of members of the Council present at the meeting: 5.

TABLE 1 - Prohibition by time

The detonation, without the permission of the Band Council, of fireworks or explosive devices not used in construction

Prohibited period

At all times

The discharge of firearms

At all times

The operation of any electronic device or group of connected electronic devices incorporating one or more loudspeakers or other electro-mechanical transducers, and intended for the production, reproduction or amplification of sound

11 PM to 7 AM

The operation of any auditory signaling device, including but not limited to the ringing of bells, except for religious services, or gongs and the blowing of horns or sirens or whistles, or the production, reproduction or amplification of any similar sounds by electronic means, except where required or authorized by law or in accordance with good safety practices

11 PM to 7 AM

The operation of any motorized conveyance other than on a highway or other place intended for its operation

11 PM to 7 AM

Persistent barking, calling or whining or other similar noise making, if such noise persists for a period of time in excess of fifteen minutes, by any domestic pet or any other animal kept or used for any purpose other than agricultural

At all times

The operation of a commercial car wash with air drying equipment or any other type of car wash

11 PM to 7 AM

Yelling, shouting, hooting, whistling or singing

11 PM to 7 AM

All selling or advertising by shouting or outcry or amplified sound

7 PM to 8 AM

Loading, unloading, delivering, packing, unpacking, or otherwise handling any containers, products, materials, or refuse, whatsoever, unless necessary for the maintenance of essential services, or the moving of private household effects

11 PM to 6 AM

The operation of any equipment in connection with construction

11 PM to 7 AM

The operation or use of any tool for household purposes other than snow removal

11 PM to 7 AM

The operation of solid waste bulk lift or refuse compacting equipment

11 PM to 7 AM