




TITLE: BY-LAW NO. 6886 TO AMEND NUISANCE BY-LAW NO. 5806 TO PROHIBIT HUNTING AND TRAPPING		
PRESENTER: Keith Atkinson, Chief of Police	AGENDA NO:	
DEPARTMENT: Police Department	DATE: September 18, 2007	
CLEARANCES: Nil	ATTACHMENTS: 1. By-law (# of pages = 2) 2. Consolidated By-law (# of pages = 6) 3. Wildlife Act, RSM 1987 Schedule A	
APPROVALS:		
		
_____	<u>07 September-18</u>	_____
Department Head	Date	City Manager
		<u>18/09/07</u>
		Date

SUMMARY OF HISTORY/DISCUSSION:

In order to ensure the safety and well-being of the citizens of Brandon, hunting has been disallowed within city limits by virtue of the definition of “firearm” within Provincial legislation and the inclusion of same in the City’s Nuisance By-law.

Recently, the above definition was amended by the Province, and now does not include “bow and arrow” in its definition. As a result, an amendment is required to the Nuisance By-law. In reviewing the matter, it has also been determined that trapping should be disallowed within city limits, also for safety reasons.

The attached amending by-law clearly defines hunting and trapping, and strictly prohibits both activities within the City of Brandon.

RECOMMENDATION:

That By-law No. 6886, to amend the Nuisance By-law No. 5806, to prohibit hunting and trapping within the City of Brandon, be read a first time.

BY-LAW NO. 6886

BEING A BY-LAW of The City of Brandon to further amend Nuisance By-law No. 5806 to prohibit hunting and trapping within the City of Brandon.

WHEREAS Section 232 (1) of The Municipal Act, L.M. 1996, c.58 Chap. M225 provides in part, authority for a municipality to pass by-laws for municipal purposes respecting

- (a) the safety, health, protection and well-being of people;
- (b) the sale and use of firecrackers and other fireworks, the use of rifles, guns and other firearms, and the use of bows and arrow and other devices;
- (c) wild and domestic animals and activities in relation to them;

AND WHEREAS Sections 232 (1)(c) and 233 of The Municipal Act, L.M. 1996, c.58 Chap. M225 provides authority for a municipality to pass by-laws with respect to activities or things on private property that in the opinion of the council are or could become a nuisance;

AND WHEREAS The City of Brandon has deemed it necessary and expedient to amend Nuisance By-law No. 5806 to prohibit hunting and trapping of wild animals within the City of Brandon;

NOW THEREFORE the Council of the City of Brandon duly assembled, enacts as follows:

1. By-law No. 5806 shall be further amended as follows:

- (a) PART I: DEFINITIONS, Section 1, Subsection (c),
 - (i) by adding the following paragraph immediately following paragraph (4):

“(4.1) **“HUNT”** means chasing, driving, flushing, attracting, pursuing, worrying, following after or on the trail or, searching for, shooting at, stalking or lying in wait for a wild animal, whether or not the wild animal is then or subsequently captured, killed, taken or wounded, but does not include stalking, attracting searching for or lying in wait for wild animals by an unarmed person solely for the purpose of watching or taking pictures of wild animals.”;
 - (ii) by adding the following paragraph immediately following paragraph (10):

“(10.1) **“TRAP”** means taking, capturing or killing or attempting to take, capture or kill wild animals by any means or device designed to enclose, capture, hold, ensnare or otherwise restrain a wild animal whether that means or device kills the animal or not.”;
 - (iii) by adding the following paragraph immediately following paragraph (11):

“(12) **“WILD ANIMAL”** means an animal or bird of a species or type listed in Schedule “A” of *The Wildlife Act, RSM 1987, c. W130*, or declared by the regulations to be a wild animal.”
- (b) PART IV: NUISANCES, Section 8, by deleting therefrom the words: “or use any bow and arrow”;
- (c) PART IV: NUISANCES, Section 8.1, by adding the words: “use a bow and arrow, pellet or BB gun” immediately following the words: “No person shall”;
- (d) PART IV NUISANCES, by adding the following immediately after Section 8.1:
 - “8.2 No person shall hunt, trap, take, kill or capture, or attempt to trap, take, kill or capture a wild animal within the City of Brandon.
 - 8.3 An officer may capture or kill a wild animal for the purpose of protecting property or public safety, research or the management of wild animals.
 - 8.4 An officer may discharge a firearm, or use a bow and arrow, pellet or BB gun in the execution of their duties.”

2. This By-law shall come into full force and take effect on the day of its passage.

DONE AND PASSED by the Council of The City of Brandon duly assembled this day of
A.D., 2007

MAYOR

CITY CLERK

Read a first time this day of A.D. 2007
Read a second time this day of A.D. 2007
Read a third time this day of A.D. 2007

CONTINUING CONSOLIDATION
NUISANCE BY-LAW NO. 5806/81/90

AS AMENDED BY BY-LAW NOS. 6165/14/94, 6775 and 6886.

BEING A BY-LAW of The City of Brandon to provide for the regulation of public order and noises, to be known as the "Nuisance By-law".

WHEREAS The City of Brandon is empowered under Section 369 of The Municipal Act, R.S.M. 1988 c.M225 to provide for regulating public order;

AND WHEREAS The City of Brandon is empowered under Section 370 of The Municipal Act. R.S.M. 1988 c.M225 to provide for prohibiting noises;

AND WHEREAS it has been found necessary to make provisions for the maintenance of order and for the suppression of nuisances or noise within The City of Brandon;

NOW THEREFORE, the Council of The City of Brandon in regular session assembled enacts as follows:

PART I: DEFINITIONS

1. DEFINITIONS

- (a) 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.
- (b) All reference herein to "he" shall include "she" unless the context thereof requires otherwise.
- (c) In this by-law:
 - (1) "CHIEF OF POLICE" means the Chief of Police for the City and any one acting or authorized to act on his behalf.
 - (2) "CITY" means The City of Brandon or the area contained within the boundaries thereof.
 - (3) "COUNCIL" means the Council of the City.
 - (4) "FIRE CHIEF" means the Fire Chief for the City and any one acting or authorized to act on his behalf.
 - (4.1) "***HUNT***" means ***chasing, driving, flushing, attracting, pursuing, worrying, following after or on the trail or, searching for, shooting at, stalking or lying in wait for a wild animal, whether or not the wild animal is then or subsequently captured, killed, taken or wounded, but does not include stalking, attracting searching for or lying in wait for wild animals by an unarmed person solely for the purpose of watching or taking pictures of wild animals.***
 - (5) "NOISE" means any loud or harsh sound.
 - (6) "NUISANCE" means an activity which interferes with the reasonable use of public or private property by any individual entitled to use such property.

1. (c) (6.1) **"OFFICER"** means a peace officer, police officer or constable working for the Brandon Police Service or any person appointed as a by-law enforcement officer unless the context thereof requires otherwise.
[EN. B/L 6775]
- (7) **"PARKS DEPARTMENT"** means the Parks Department for the City.
- (8) **"PERSON"** means any individual and includes firm, partnership, association, corporation, company, or group of persons.
- (9) **"RESIDENTIAL AREA"** means any area where persons maintain a residence, including all areas zoned as Residential pursuant to the City's Zoning By-law and all other areas where residences are maintained.
- (10) **"STREET"** means any public right of way, including a highway, providing primary access to abutting property, used as a public thoroughfare for vehicles and pedestrians including streets under construction or repair, and where the context so requires, includes any square, park, commons, driveway, or parkway, and includes lanes and alleys.
- (10.1) ***"TRAP" means taking, capturing or killing or attempting to take, capture or kill wild animals by any means or devices designed to enclose, capture, hold, ensnare or otherwise restrain a wild animal whether that means or device kills the animal or not.***
- (11) **"VEHICLE"** shall include any carriage, cart, wagon, sled, sleigh, motorcycle, motor vehicle, trailer, truck, bus, traction engine, bicycle, and any vehicle drawn, propelled or driven by any kind of power, including muscular power, but does not include the cars of electric, steam or diesel electric railways running only on rails.
- (12) ***"WILD ANIMAL" means an animal or bird of a species or type listed in Schedule A of The Wildlife Act, RSM 1987, c. W130, or declared by the regulations to be a wild animal.***

PART II: PROHIBITED NOISES

2. Except where otherwise permitted by this By-law, no person shall make, continue or cause, or allow to be made or continued, by whatever means, any noise which does, or is likely to, annoy, disturb, injure, endanger or detract from the peace, health or safety of any other person.
3. Without restricting the generality of Section 2 hereof, the following shall be deemed likely to annoy, disturb, injure, endanger or detract from the peace, health or safety of any other person:
 - (a) the sound caused by the discharge of a gun or other firearm, grenade, or any other explosive or noise making device, including a firecracker or other fireworks, unless specifically authorized by the Chief of Police, Fire Chief or Council;
 - (b) the sounding of any auditory warning device, including but not limited to a bell, burglar alarm, horn or siren, except when required by law or in order to give warning of the existence of a present or impending dangerous situation;
 - (c) the sound emanating from any musical instrument or loud speaker, when audible from a distance of thirty metres (97.5 feet) or more, unless authorized by the Chief of Police or Council;

3. (d) the sound emanating from an improperly operated or maintained vehicle, including the squealing of tires, the operation of a vehicle with an improperly maintained or otherwise deficient exhaust system and those noises which emanate from a vehicle by reason of its state of disrepair;
- (e) the sound resulting from the operation of an internal combustion engine, whether situated within a vehicle or otherwise, except where used in conjunction with an exhaust system and muffler which effectively prevents the emanating of loud or unusual noises;
- (f) the sound emanating from excavation or construction work of any nature between 2200 hours of any day and 0700 hours of the next following day (10:00 p.m. - 7:00 a.m.), except in such locations where such conduct is permitted by applicable land use provisions, or where authorized by the Chief of Police;
- (g) the sound resulting from the operation of any motorized lawn mower, snow clearing device, chain saw, motorized garden tiller or motorized toy in any residential area between 2200 hours of any day and 0700 hours of the next following day (10:00 p.m. - 7:00 a.m.). This provision shall apply notwithstanding Section 4 hereof;
- (h) 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-reproducing, 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;
- (i) any loud, blasphemous, abusive, obscene, or insulting language or singing or shouting in a boisterous manner;
- (j) Any loud, excessive, or continual barking, howling, wailing, caterwauling or other sound caused by any domestic animal.

PART III: PERMITTED NOISES

4. 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 Chief of Police, 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 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, and including all military parades;
 - (c) the use of any bell, whistle or similar sound in conjunction with the operation of the railway locomotive, engine or other rolling stock when used in accordance with other applicable laws and in particular The Railway Act of Canada;
 - (d) snow clearing and road maintenance vehicles operated by the City or the Province of Manitoba Department of Highways, or their designates;

4. (e) sound emanating from the Fire Hall alarms, or the sirens of any emergency vehicle while engaged in providing public service to the residents of, or visitors to the City, or during testing of the Emergency Measures Organization civil defense siren;
- (f) sound generated by emergency work of any nature when such work is authorized by the Chief of Police or Fire Chief;
- (g) the use of any bell, chime, or similar sound for the purpose of calling persons to church and/or school services.

PART IV: NUISANCES

5. No person shall be allowed to stand in groups or to sit or lounge on chairs, benches or other things or to loiter in front of any business establishment or residence or in a street so as to cause any obstruction to the free use of said street or, by any manner of conduct, commit any public nuisance by collecting, loitering or standing as an idler on any of the streets or sidewalks of the City, or in any public place within the City, or on the step of or approach to a house or other premises open to a street whereby a member or members of the public are liable to be subjected to disturbance or annoyance provided that nothing contained in this Section shall be construed to extend to any person taking part in any lawful procession or gathering.
6. No person shall advertise any sale of merchandise, furniture or any other article, matter or thing by the ringing of any bell, blowing of any horn, crying, or creating any other discordant noise in any of the streets of the City.
7. No person shall climb, bark, break, peel, cut, deface, injure or destroy the whole or any part of any tree, sapling, or shrub now growing or which may hereafter be planted by any person or by the Parks Department in any street or public place of the City, nor may any such tree be removed or cut down unless by permission of the Parks Department.
8. No person shall cast, project or throw any stones or balls of snow or ice or other missiles dangerous to the public ~~or use any bow and arrow~~ in any of the streets or public places of the City.
 - 8.1 No person shall **use a bow and arrow, pellet or BB gun**, fire or discharge any gun, fowling piece or firearms within the City unless prior written approval is granted by the Chief of Police.
[EN. B/L 6165/14/94]
 - 8.2 No person shall hunt, trap, take, kill or capture, or attempt to trap, take, kill or capture a wild animal within the City of Brandon.**
 - 8.3 An officer may capture or kill a wild animal for the purpose of protecting property or public safety, research or the management of wild animals.**
 - 8.4 An officer may discharge a firearm, or use a bow and arrow, pellet or BB gun in the execution of their duties.**
9. No person shall bathe or swim in the Assiniboine River in sight or view of any street or house within the City at any time except if clad in a suitable and proper bathing suit, nor shall any person indecently expose himself in any of the streets or public places of the City, nor shall the plea of answering the call of Nature be considered a palliation of the offense.

10. No person shall post or put up any indecent placard, writing or picture or write any indecent or immoral words or make any indecent pictures or drawings, any of which may be morally offensive to modesty and delicacy, on any public or private building, wall, fence, sign, monument, post, sidewalk or pavement, in any of the streets or public places of the City.
11. Every person found drunk or disorderly or drunk and disorderly in any street or public place, shall be liable to the penalties of this by-law.
 - 11.1 It shall be an offence for any person to use a skateboard on private or public property, including but not limited to parks, recreation centres, restaurants, facilities, retail stores and malls, on which there is erected and maintained signage indicating that skateboarding thereon is prohibited.
 - 11.2 The owner or person in charge or control of private property who wishes to take advantage of the above regulation for the purpose of keeping persons from skateboarding on the property shall erect and maintain thereon clear and legible signs which indicate that, pursuant to the City's Nuisance By-law, skateboarding is prohibited.
 - 11.3 Where any person in charge or control of a skateboard commits any infraction of the regulations contained herein respecting skateboards, a Police Officer or Constable working for the City Police Service or such other person authorized to act by the Chief of Police may, upon observing any such infraction, seize such skateboard and impound same for a period of thirty (30) days. The owner of any such skateboard so impounded, may recover same by:
 - (a) providing sufficient proof of ownership to the Police Services; and
 - (b) paying a fine as established in the City's Annual Fee Schedule.

[EN. B/L 6775]

PART V: PENALTIES

12. (a) Any person who contravenes, neglects, omits or fails to obey or observe any provision of this By-law is guilty of an offense and is liable on summary conviction to a fine not exceeding One Thousand Dollars (\$1,000.00) and costs on conviction or to imprisonment for a term not exceeding ninety (90) days or to both such a fine and such an imprisonment.
- (b) Where the contravention, refusal, neglect, omission or failure continues for more than one (1) day, the person is guilty of a separate offense for each day that it continues.

PART VI: REPEAL AND ENACTMENT

13. (a) By-law No. 3188 and amending By-law Nos. 3469, 3751, 5018/36/80, 5078/21/81, 5164/50/82 and 5205/40/83 are hereby repealed.
- (b) The repeal of the by-laws in the last preceding subsection mentioned shall not revive any By-law or any provision of any By-law repealed by them, nor shall the said repeal prevent the effect of any saving clause in the said by-laws or the application of any of the said by-laws or any other by-law or provision of law formerly in force to any transaction, matter or thing anterior to the said repeal to which they would otherwise apply.
- (c) The repeal of the said by-laws should not affect:
 - i) Any penalty, forfeiture or liability incurred before the time of such repeal, or any proceedings for enforcing the same had, done, completed or pending at the time of such repeal; or

- 13, (c) ii) Any action, suit, judgement, decree, certificate, execution, process, order, rule or any proceeding, matter or thing whatever, respecting the same had, done, made, entered, granted, completed, pending, existing or in force at the time of such repeal; or
- iii) Any act, deed, right, title, interest, grant, assurance, registry, rule, regulation, contract, lien, charge, matter, or thing had, done, made, acquired, established, or existing at the time of such repeal; or
- iv) Any office, appointment, commission, salary, allowance, security, duty, or any matter or thing appertaining thereto at the time of such repeal; or
- v) Any bond, note, debenture, debt, or other obligation made, executed, or entered into by the City at the time of such repeal.
- (d) The repeal of the said by-laws shall also not defeat, disturb, invalidate, or prejudicially affect any matter or thing whatsoever had, done, completed, existing or pending at the time of such repeal.

14. This by-law shall come into full force and take effect upon the passage thereof.

DONE AND PASSED by the Council of The City of Brandon duly assembled this 26th day of August A.D. 1991.

"R. N. Borotsik"

MAYOR

"C. R. Arvisais"

ACTING CITY CLERK

Read a first time this 12th day of August A.D. 1991.

Read a second time this 26th day of August A.D. 1991.

Read a third time this 26th day of August A.D. 1991.

I, Conrad Robert Arvisais, Acting Clerk of the municipality of The City of Brandon DO HEREBY CERTIFY the within to be a true and correct copy of Nuisance By-law No. 5806/81/90, as amended by By-law Nos. 6165/14/94, 6775 and 6886.

C. R. Arvisais, City Clerk

SCHEDULE A

WILD ANIMALS

Division 1 — Big Game

Moose	<i>Alces alces</i>
Elk	<i>Cervus elaphus</i>
Barren-ground Caribou	<i>Rangifer tarandus groenlandicus</i>
Woodland Caribou	<i>Rangifer tarandus caribou</i>
White-tailed Deer	<i>Odocoileus virginianus</i>
Mule Deer	<i>Odocoileus hemionus</i>
Black Bear	<i>Ursus americanus</i>
Gray (Timber) Wolf	<i>Canis lupus</i>

Division 2 — Fur Bearing Animals

Beaver	<i>Castor canadensis</i>
Short-tailed Weasel	<i>Mustela erminea</i>
Long-tailed Weasel	<i>Mustela frenata</i>
Coyote	<i>Canis latrans</i>
Fisher	<i>Martes pennanti</i>
Artic Fox	<i>Canis lagopus</i>
Red Fox	<i>Canis vulpes</i>
River Otter	<i>Lutra canadensis</i>
Badger	<i>Taxidea taxus</i>
Bobcat	<i>Felis rufus</i>
Marten	<i>Martes americana</i>
Mink	<i>Mustela vison</i>
Muskrat	<i>Ondatra zibethica</i>
Red Squirrel	<i>Tamiasciurus hudsonicus</i>
Wolverine	<i>Gulo gulo</i>
Raccoon	<i>Procyon lotor</i>
Lynx	<i>Felis canadensis</i>

Division 3 — Game Birds

Ruffed Grouse	<i>Bonasa umbellus</i>
Gray (Hungarian) Partridge	<i>Perdix perdix</i>
(Wild) Turkey	<i>Meleagris gallopava</i>
Rock Ptarmigan	<i>Lagopus mutus</i>
Willow Ptarmigan	<i>Lagopus lagopus</i>
Spruce Grouse	<i>Canachites canadensis</i>
Sharp-tailed Grouse	<i>Pedioecetes phasianellus</i>
Ring-necked Pheasant	<i>Phasianus colchicus</i>

Plus Migratory Game Birds protected in Canada under the *Migratory Birds Convention Act*.

Division 4 — Small Game Animals

Division 5 — Amphibians and Reptiles

Northern Leopard Frog (includes tadpoles)	<i>Rana pipiens</i>
Tiger Salamander	<i>Ambystoma tigrinum</i>
Red-sided Garter Snake	<i>Thamnophis sirtalis</i>
Western Plains Garter Snake	<i>Thamnophis radix</i>
Snapping Turtle	<i>Chelydra serpentina</i>
Painted Turtle	<i>Chrysemys picta</i>

Division 6 — Protected Species

Pronghorn (Antelope)	<i>Antilocapra americana</i>
Cougar	<i>Felis concolor</i>
White Pelican	<i>Pelecanus erythrorhynchos</i>
Double-crested Cormorant	<i>Phalacrocorax auritus</i>
Greater Prairie Chicken	<i>Tympanuchus cupido</i>
All vultures, eagles, hawks, osprey and falcons	Falconiformes
All owls	Strigiformes
Kingfisher	<i>Megaceryle alcyon</i>
Blue Jay	<i>Cyanocitta cristata</i>
Gray (Canada) Jay	<i>Perisoreus canadensis</i>
Common Raven	<i>Corvus corax</i>
Western Hognose Snake	<i>Heterodon nasicus</i>
Northern Prairie Skink	<i>Eumeces septentrionalis</i>
Plains Spadefoot Toad	<i>Scaphiopus bombifrons</i>
Polar Bear	<i>Ursus maritimus</i>
Wood Bison (except Wood Bison kept in captivity and privately owned)	<i>Bison bison athabascae</i>

Plus Migratory Non-Game Birds and Migratory Insectivorous Birds protected in Canada under the *Migratory Birds Convention Act*.

S.M. 1991-92, c. 17, s. 7; S.M. 1994, c. 8, s. 11.