

Presented To:	City Council
Presented:	Tuesday, Nov 03, 2015
Report Date	Tuesday, Oct 06, 2015
Type:	Managers' Reports

Request for Decision

Consolidated Noise By-Laws

Recommendation

Recommendation One: That the report from the Executive Director Administrative Services/City Clerk regarding Noise By-Laws be received.

Recommendation Two: That staff be directed to work towards implementation of Option ____ in regards to a Noise By-Law.

Option One: Following a process of public input, develop a draft consolidated Noise By-Law for discussion by Council that is based on the principles outlined in the report from the Executive Director Administrative Services/City Clerk.

Option Two: That staff be directed to take the steps necessary to bring the repeal of all existing Noise By-Laws to Council.

Executive Summary

Ontario's Municipal Act grants authority to municipalities to regulate noise to their communities. The general intent of Noise By-Laws is to protect residents from unusual, unwanted and unnecessary noise.

This report describes the opportunity to adopt one consistent approach to noise and noise related complaints across the City of Greater Sudbury. Should Council wish to implement a consolidated Noise By-Law, the report provides information about principles that would provide a foundation on which to develop a new by-law. The alternative is for the City to cease regulating noise in the community and repeal all of the existing Noise Related By-Laws.

If neither option is adopted, the status quo would remain.

Background

History of Noise By-Laws and Noise Related Complaints in the City of Greater Sudbury:

In 2001, at the time of municipal amalgamation, each of the seven predecessor communities that became part of the City of Greater Sudbury had its own Noise By-Law, some of which had been amended over time.

Signed By

Report Prepared By

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Division Review

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Recommended by the Department

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In accordance with The City of Greater Sudbury Act 1999:

(6) Every by-law or resolution of an old municipality that is in force on December 31, 2000 shall be deemed to be a by-law or resolution of the city council on January 1, 2001 and remains in force, in respect of the part of the municipal area to which it applied on December 31, 2000, until it expires or is repealed or amended to provide otherwise. 1999, c. 14, Sched. A, s. 5 (6).

As a result there are currently 26 different by-laws regulating noise within the different communities that comprise the City of Greater Sudbury, including seven parent by-laws, and nineteen amending by-laws.

The existing by-laws contain regulations that differ from one another, are outdated and do not reflect current best practices. Furthermore, those portions of the City of Greater Sudbury that were unorganized prior to amalgamation do not have any noise regulations in place. Should the municipality wish to regulate noise, there is a need for one set of consistent noise controls throughout the community.

Enforcement Requests and Constraints:

In accordance with the current Collective Bargaining Agreement, City of Greater Sudbury Enforcement Officers work on day shifts during the week and the one part-time officer works in the evenings and early mornings. Since most noise related complaints relate to activities during the late night and early morning hours, and most often on the weekends, investigation is almost always after the fact. The typical approach to responding to Noise By-Law complaints is to educate the affected parties. Only if the noise continues, is the complainant advised to maintain a log of the type, time and duration of the unwanted noises, in support of more formal enforcement activities, up to and including the laying of charges.

The table below reflects all of the 319 noise related complaints received by the Compliance and Enforcement Section during 2014, three (3) of which led to charges being laid by municipal staff. Half of the complaints relate to loud music and/or sound from a television or stereo in residential areas. Most often these complaints originate in the late night and early morning hours and are associated either with noise between adjacent apartments, or to parties. Another significant area for complaints comes from industrial, commercial and maintenance activities such as snow plowing, construction, deliveries, mechanic repairs, vehicles operating with loud engines or faulty exhausts and related sounds.

Noise Complaint Type	Number of Instances 2014	Percentage of Complaints
Music or sound from Television, Stereos including Loud Music from Parties	158	49.5%
Industrial, construction and maintenance noises: Mechanical repairs and other vehicle related noises (28) Construction (20) Residential power tools, equipment or activities (16) Truck deliveries and waste removal activities (16) Snow plowing and street cleaning (14) Industrial noises and associated equipment (9)	103	32.2%
Noise between dwelling units such as banging, yelling, shouting, stomping, and/or moving furniture	48	15%
Miscellaneous Noise – Nondescript and/or Referred to Animal Control	10	3%

TOTAL	319	100%
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Investigation history has shown that there are a number of instances in which noise complaints, in the various categories above appear to be driven by neighbour-to-neighbour disputes in which noise complaints may be retaliatory, or excessive noise created purposely to aggravate an adjacent neighbor.

Where provincial laws related to Noise have been breached, charges may be laid by Police or the appropriate Ministry and are heard in Provincial Offences Court. For Police Services, noise related complaints, including those related to Municipal By-Laws, are low priority calls and a significant proportion are either cancelled or never dispatched. Noise related complaints that have other elements associated with them, as for example a dispute, dangerous or reckless behaviours, drinking under age etc. may be prioritized differently.

Greater Sudbury Police Service advise that to mid September 2015 they have received 774 noise related calls this year. According to the information received from the service,

“The noise complaints are primarily received between 2200 and 0300 hours and certainly the frequency increases on any weekend night. Unless there are extenuating circumstances, noise complaints are not a priority call for service. Without going through every call, I can venture an educated guess that approximately 40% of all noise complaints are never dispatched. Anonymous noise complaints are automatically cancelled after 2 hours if there are no further complaints. If there is a complainant and we are unable to dispatch in a timely manner, the noise complaint is cleared to our Community Information Officer for follow up via phone.”

In 2014, Greater Sudbury Police laid noise related charges as follows:

Authority	Number of Charges	Percentage of Charges
Highway Traffic Act	84	52.9%
Motorized Snow Vehicles Act	31	25.6%
CGS By-Laws	6	4.9%
TOTAL	121	100%

Option One: Develop a New Consolidated Noise Control By-Law Giving Consideration to the Principles Discussed in this Report:

Staff has conducted research by comparing by-laws and best practices from other municipalities, and consulted with the Ministry of the Environment, Health Canada and the Canadian Hearing Society for guidelines on acceptable noise and the relationships between noise and health. The Ministry of the Environment provides a Model Municipal Noise Control By-law which can be a starting point in development of a new By-Law.

A Noise By-Law generally prohibits “noises that interfere with the peaceful enjoyment of the urban environment”. The By-Law must described those sounds and noises with sufficient specificity that the By-Law can withstand court challenges, including that the definitions of noise are specific and enforceable. For example, the City of Guelph’s definition of noise as “sound that is created by an activity set out in this by-law when such sound is of a volume that it annoys or disturbs or is likely to disturb the peace, quiet, comfort or repose of a person” was found by the Court to be void “for vagueness”.

Should council wish to continue to control unwanted noise in the City, staff recommend that the following five principals be considered and addressed when developing a new comprehensive Noise By-Law and specifying how that by-law will be applied and enforced. Each of the principles will be described in more detail in the paragraphs that follow:

1. Noise can have an adverse effect on Health;
2. Certain sounds and noises are acceptable for safety and/or historic reasons;
3. There is a need to balance the sometimes competing interests of residents and their rights to use and maintain their property with the impacts of noise on their neighbours;
4. Noise parameters should reflect the nature of the community, including the four distinct seasons, shift workers and uses of public versus private spaces;
5. Objective measures of sound levels when combined with discretion of the investigating officer are often the most reasonable method of enforcement of noise complaints.

1. Noise and Health:

Governments and organizations have done work on the impacts of noise on human health. According to the World Health Organization :

Excessive noise seriously harms human health and interferes with people's daily activities at school, at work, at home and during leisure time. It can disturb sleep, cause cardiovascular and psychophysiological effects, reduce performance and provoke annoyance responses and changes in social behaviour.

Health Canada has identified excessive community noise as an annoyance that can adversely affect one's quality of life and health. Noise annoyance may affect one's ability to have an ordinary conversation, enjoy leisure activities, get a good sleep (which can be day or night depending on whether one works shift work), or do work that requires thought and concentration. The Ministry of the Environment (MOE) through application of the Environmental Protection Act (EPA) considers noise as a contaminant discharged into the natural environment that may cause discomfort, have an adverse health effect and/or contribute to a loss of enjoyment of the normal use of property.

2. Noise and Sounds Created for Safety or Historic Reasons

Noises in the community specific to promoting safety as well as other types of sounds that have traditionally been accepted for historic, cultural or similar reasons are often exempt from Noise Control By-Laws because they are either required by way of other legislation or not practical to control. While these sounds may be an annoyance to some, they are generally used at a minimum level and duration as necessary for the situation.

Examples of specific noises that are often omitted from Noise By-Laws are those noises that are required by legislation to alert the public of a potential safety risk. Examples include items such as vehicle horns and back-up beepers, warning bells at railway crossings, fire and other public warning systems and sirens on emergency vehicles. For example, the Highway Traffic Act specifically excludes "*motor vehicle of a municipal fire department while proceeding to a fire or answering a fire alarm call*" from the noise provisions of that Act and also includes provisions that vehicles have an "*. . . alarm bell, gong or horn, which shall be kept in good working order and sounded whenever it is reasonably necessary to notify pedestrians or others of its approach.*" Other safety or health related noises can relate to snow clearing/removal or watermain repairs especially during the overnight period.

Sounds that are traditionally excluded from Noise By-Laws may also include bells at churches and places of worship, school bells, funerals and funeral processions, public firework displays and similar cultural or historical rights.

3. Balancing Interests and Property Rights

Imposing noise controls may be seen by some as restricting the rights of residents to use their property the way they choose versus residents' rights to quiet enjoyment of their property. Neighbourhood noises, such as grass cutting, operation of power tools, snow removal, running the engines of recreational vehicles like

quads or snowmobiles and listening to loud music have varying degrees of tolerance for different people, depending on the loudness, time of day and duration of the noise and whether the person is the source of the noise, or a neighbor for whom the noise is unwanted or unwelcome.

4. Noise Parameters Reflect the Nature of the Community

Noise parameters should reflect the nature of the community, including the four distinct seasons, shift workers and uses of public versus private spaces.

Noise can be very different from one season to another. Seasonal adjustments to homes, including open versus closed windows and less time spent outside can change perceptions of the same sound from winter to summer.

Traditional rules restricting noise in the evening or overnight hours are not helpful for those who work shift work and whose sleep may be affected by noise at any time of the day or night. Greater Sudbury has a significant number of employees who work shifts across a number of sectors including but not limited to mining, health care and emergency services. Statistic Canada data suggest that two of the four top occupations of the employed labour force in Greater Sudbury, likely work shifts being Underground Production and Development Miners who rank 2nd and Registered Nurses who rank 4th. Similarly, the National Household Survey looks at the employed population by time of leaving for work and the results for Greater Sudbury suggest that approximately half of our citizens work what may be viewed as traditional hours with the balance of employees having early morning or later day start times.

Time Leaving for Work	Number of Employees	As a Percentage of Total
5:00 a.m. - 6:59 a.m.	20,760	27.9%
7:00 a.m. – 9:00 a.m.	40,020	53.7%
Anytime after 9:00 a.m.	14,715	19.8%
TOTAL	74,495	100%

Noise control related to operations of a business or delivery of a service, as for example waste disposal or late night deliveries to a retail establishment need to be applied in such a way as to allow businesses and services to operate effectively in a community where citizens work varying hours, there is shift work associated with many sectors and business and residential buildings may co-exist in mixed use developments.

Similarly, citizens who have purchased a property that is adjacent to a playing field or community gathering place may have different views on how noise affects them, than do those cheering at the closely tied soccer game, singing along to an outdoor concert, or enjoying a summer time street festival. In some communities, named events that are conducted on regular basis (in Sudbury this could include such events as Festival Boreal or RibFest) or events generally described as traditional, festive or religious in nature, may be granted specific exemptions in a by-law.

5. Combining Objective and Subjective Enforcement

There are multiple approaches to enforcement of noise related offences, some of which are more subjective and qualitative in nature and others of which are more objective and based on measured sound levels. The most effective by-laws are those that combine clear language about what noises are prohibited and when with quantitative measures to assess loudness of sound at the point of reception and which are applied with judiciousness and a fair amount of common sense.

The subjective or qualitative approach to noise control is the type of regulation set out in the current noise by-laws, and relies solely on the evidence and subjectivity of the residents being affected by the noise, with no formal measurement of the sound levels. In this model, the by-law describes “unusual” noise specifically

and prohibits the creation of this type of noise during times and days set out in the by-law. For example, the operation of a lawn mower or snowblower in the overnight period between 9:00 pm and 8:00 am might not be permitted and is enforced based on the complaint of a witness to this activity outside the permitted times.

Although this method is seen by some as outdated and difficult to enforce, setting out specific times and days when residents and businesses are permitted to engage in certain noisy activities is effective for purpose of public education and has been proven to be enforceable through solid documentation that leads to a successful prosecution. The drawback of this approach is that prescriptive times and activities are difficult to establish in a way that protects the rights of all citizens.

The objective or quantitative approach sets limits of the loudness or intensity of a specific type of sound measured in decibels (dB). Health Canada and the Ministry of the Environment conduct studies and set limits and standards for acceptable community noise levels. Any limits set in the by-law should reflect these standards and are enforced by an officer trained in the use of sound meters by recording noise limits at the point of reception. Any noise over the limit set out in the by-law creates an offence. Municipalities that have quantitative measures to enforce noise in their community advise that this method is beneficial in addressing stationary noises such as pool pumps and air conditioning units and in some instances with repetitively loud music and sound events. However, this approach requires the presence of a trained “noise control officer” to take the reading and confirm the offence.

An approach which combines both types of controls provides the municipality with the most flexibility in determining methods most effective for controlling the types of noises creating annoyances in the community. An example of a comprehensive approach to controlling noise is to prohibit certain sounds during specific times of the day (subjective method) and controlling the maximum sound limit during all other times (objective method).

Community Consultation:

Should Council direct staff to work towards a new Noise By-Law, it will be important for Council and staff to know what the needs and expectations of the community are by way of a public consultation process. It is a common practice amongst those municipalities to hold public consultations to better understand community tolerance for noise as a first step to drafting a new or revised By-Law. Even something seemingly as simple as setting hours for grass cutting or clearing driveways may be quite complex when one considers the very varied needs of all the neighbours who might be exposed to those sounds and often have competing views in this regard as described below.

Grass cutting can sometimes be a source of noise complaints in the summer months when windows are open and noise travels more easily into the home. Intuitively, it may seem reasonable to restrict grass cutting in the later evening hours when traditionally people are sleeping. However, for the shift worker who is going to bed at the end of a night shift, a neighbor cutting grass at 9:00 a.m. may be as disruptive to their sleep, as cutting grass in the evening may be to the parent of a young child who is resisting falling asleep at 9:30 p.m. Equally, in period of extreme heat, there may be health related reasons for residents to cut their lawns in the early morning or late evening when the day is cooler and there is lower risk of adverse heat related health impacts from the exertion. Likewise, in the winter, a health care worker who starts work at 6:00 a.m. may need to clear their driveway in the early hours of the morning or someone returning home in the late evening, who is unable to get the vehicle onto the driveway due to a snowplow bank, is forced to clear the driveway as overnight street parking is not permitted in the winter months.

Option Two: Alternatives to Having a Noise By-Law:

The federal and provincial governments have legislation in place that addresses, in one way or another, elements associated with noise. In the workplace, the Canadian Labour Code applies to federally regulated workplaces such as airports while the Occupational Health and Safety and Labour are monitored and

enforced by the Ministry of Labour as it related to noise exposure in provincially regulated workplaces.

At the Federal Government level, Health Canada, primarily through Acts such as the Canadian Environment Assessment Act, the Hazardous Products Act (which sets standards for noise related to consumer products) and the Motor Vehicle Safety Act (which regulates vehicle sound and noise emission standards). There are also a number of voluntary standards related to Noise some of which have been developed through the Canadian Standards Association. The Criminal Code contains provisions related to nuisances and disturbances.

Similarly, there are various pieces of provincial legislation which contain noise related provisions. For example, the Environmental Protection Act prohibits noise that is discharged into the environment that causes an adverse health effect. There are rigorous Ministry of the Environment guidelines and approvals required by businesses which wish to obtain "*Certificates of Approval*" that permit them to emit noise at certain thresholds. In accordance with the Liquor License Act, bars and restaurants with outdoor patios or eating areas must ensure that noise does not disturb nearby residents.

Under Section 75 of the Highway Traffic Act:

75. (1) Every motor vehicle or motor assisted bicycle shall be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and excessive smoke

75. (4) A person having the control or charge of a motor vehicle shall not sound any bell, horn or other signalling device so as to make an unreasonable noise . . . nor shall the driver at any time cause the motor vehicle to make any unnecessary noise.

At the local level, municipalities also have noise control measures through land use management, zoning, traffic management and road noise barrier programs. In Greater Sudbury, specific noise related issues are also addressed in the Fireworks By-Law, the Animal Control By-Law (regarding barking dogs) and the Zoning By-Law which prohibits "obnoxious" land use defined as:

"A use which, from its nature or operation, creates a nuisance or is liable to become a nuisance or offensive by the creation of noise or vibration."

There are also provisions in law for individual citizens to address excessive noise and disruption matters through the courts.

Conclusion

This report is provided to share with Council the results of staff's research on the subject of a harmonized noise control by-law for the City. If Council determines it is desirable to enact a by-law controlling noises in the City, staff will conduct a public consultation, using the principles enumerated in this report as a starting point for establishing community needs and will provide Council with a report containing discussion points to consider in drafting of a new harmonized noise control by-law. Alternatively, should Council decide not to regulate noise by way of a By-Law, steps will be taken to bring the repeal of the existing by-laws and their amendments to Council.

7th
Rec-1
Rec-2
Opt 1



CITY COUNCIL

RESOLUTION

Moved By [Signature]

No. CC2015-318

Seconded By [Signature]

Date 2015-11-03

THAT staff be directed to work towards implementation of Option One in regards to a Noise By-Law.

Option One: Following a process of public input, develop a draft consolidated Noise By-Law for discussion by Council that is based on the principles outlined in the report from the Executive Director Administrative Services/City Clerk.

CARRIED
2015-11-03
[Signature]
Mayor Bigger, Chair