

Authority: Item 8, Planning Committee
Report 11-021 (PED10115(a))
CM: November 30, 2011

Bill No. 285

CITY OF HAMILTON

BY-LAW NO. 11-285

NOISE CONTROL BY-LAW

To control noise in the City of Hamilton and to repeal By-law No. 03-020.

WHEREAS sections 8, 9 and 10 of the Municipal Act, 2001 authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes, and in particular paragraphs 5, 6, 8 and 9 of subsection 10(2) authorize by-laws respecting the economic, social and environmental well-being of the municipality; the health, safety and well-being of persons; the protection of persons and property; and animals;

AND WHEREAS section 128 of the Municipal Act, 2001 authorizes the City of Hamilton to prohibit and regulate with respect to public nuisances, including matters that, in the opinion of the Council of the City of Hamilton are or could become public nuisances;

AND WHEREAS in the opinion of the Council of the City of Hamilton certain kinds of noise are or could become a public nuisance;

AND WHEREAS section 129 of the Municipal Act, 2001 authorizes the City of Hamilton to prohibit and regulate with respect to noise and, in particular, to prohibit noise unless a permit is obtained from the City of Hamilton and to impose conditions for obtaining, continuing to hold and renewing the permit, including requiring the submission of plans;

AND WHEREAS section 425 of the Municipal Act, 2001 authorizes the City of Hamilton to pass by-laws providing that a person who contravenes a by-law of the City of Hamilton passed under that Act is guilty of an offence;

AND WHEREAS the Municipal Act, 2001 further authorizes the City of Hamilton, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

NOW THEREFORE, the Council of the City of Hamilton enacts as follows:

SHORT TITLE

1. This By-law may be referred to as the "Noise Control By-law" or the "Hamilton Noise Control By-law".

DEFINITIONS

2. In this By-law:

"animal" means any member of the animal kingdom, other than a human;

"authorized vehicle" means a vehicle operated by or on behalf of a government, government agency or utility including but not limited to a vehicle operated by the Hamilton Police Service, the City's Emergency Services or Public Works Departments, or the Hamilton Street Railway;

"City" means the municipality of the City of Hamilton or the geographic area of the City of Hamilton as the context requires;

"construction" means activity necessary or incidental to erecting, demolishing, assembling, altering, installing, repairing or equipping a structure of any kind, a road or a utility including clearing, grading, excavating or filling any land;

"Council" means Council of the City of Hamilton;

"Director" means the City's Director of Parking and By-law Services and his or her designate or successor;

"farm" means an agricultural operation as defined in the Farming and Food Production Protection Act, 1998 and includes such an operation that is not carried on with the expectation of gain but otherwise meets the definition in that Act;

"loading" means loading, unloading, delivering, picking up, packing, unpacking or otherwise handling any containers, produce, materials or waste;

"normal farm practices" means normal farm practices as defined in the Farming and Food Production Protection Act, 1998;

"occupant" means a person over the age of 18 in possession of a property;

"officer" means a person appointed by the City of Hamilton or assigned by the Director to enforce this By-law;

"owner" includes each owner or occupant of a property;

"point of reception" means any point on a property where noise originating from other than that property is received;

"**property**" means land including a building or structure, or part of a building or structure;

"**Special Event**" means a Special Event as defined in the City's Special Events Policies and Procedures Manual and that is recognized by the City as a special event; and

"**vehicle**" includes but is not limited to a motor vehicle and any attachment to a vehicle such as a trailer.

QUALITATIVE NOISE

PROHIBITIONS

- 3.(1) No person shall make or permit to be made:
 - (a) an unreasonable noise; or
 - (b) a noise that is likely to disturb the inhabitants of the City.

- (2) Without limiting the generality of section 3, noise from the sources listed in paragraphs 3(2)(a) to 3(2)(h) is deemed to be an unreasonable noise or a noise that is likely to disturb the inhabitants of the City:
 - (a) a bell, horn, siren or other warning device, including but not limited to a vehicle's bell, horn, siren or other warning device when unnecessary or for an unreasonable period of time except when permitted by statute, regulation or by-law;
 - (b) a condition of disrepair or maladjustment, including but not limited to the maladjustment of any load, of any vehicle or a part or accessory of any vehicle;
 - (c) a radio, amplifier, speaker or other similar device on or in a vehicle that is clearly audible at least 8 m from the vehicle;
 - (d) a radio, amplifier, speaker or other similar device that is:
 - (i) projected into a public place for the purpose of advertising a good or service; or
 - (ii) clearly audible at a point of reception;
 - (e) a discharge of the exhaust of any steam engine, internal combustion engine or pneumatic device except with an exhaust or intake muffling device in good working order and in constant operation that prevents unreasonable noise;
 - (f) a combustion or electric engine, including but not limited to a model airplane or all-terrain vehicle engine, that is:
 - (i) used for recreational purposes;
 - (ii) used between 10 p.m. of one day and 7 a.m. of the next day or used for more than 1 hour in total between 7 a.m. and 10 p.m. of one day; and
 - (iii) clearly audible at a point of reception;
 - (g) an animal under the care, control or ownership of an individual that is:
 - (i) persistent; and
 - (ii) clearly audible at a point of reception, except such noise from an animal on a farm; or
 - (h) construction or loading that is clearly audible at a point of reception between 10 p.m. of one day and 7 a.m. of the next day.

QUANTITATIVE NOISE**PROHIBITION**

4. No person shall make or permit to be made noise that contravenes:
- (a) an applicable Noise Pollution Control Publication of Ontario's Ministry of the Environment; or
 - (b) a permission, such as a certificate of approval, under federal or provincial legislation.

EXEMPTIONS**NOT REQUIRING A PERMIT**

5. Despite any other provision of this By-law, this By-law shall not apply to noise from:
- (a) an activity carried on at Ivor Wynne Stadium;
 - (b) an activity carried on in accordance with a Special Event permit issued by the City or as otherwise authorized in advance by the City provided that:
 - (i) if required by the Director, a qualified individual or qualified individuals, as determined by the Director, monitor the noise and file a report with Director at the expense of the holder of the activity;
 - (ii) any noise does not begin before 11 a.m. and ends before 12 midnight of one day;
 - (iii) any noise does not exceed 90 dBA as measured 10 m from its source;
 - (iv) any noise does not exceed 60 dBA at a point of reception;
 - (v) in the event of a conflict between paragraphs 5(b)(i), (ii), (iii) or (iv) and a condition imposed under a Special Event permit or other authorization, the condition imposed under the Special Event permit or other authorization shall prevail;
 - (c) a filming event carried on in accordance with a film permit issued under the Hamilton Film Permit By-law;
 - (d) construction or loading between 7 a.m. and 7 p.m. of one day;
 - (e) the operation of an authorized vehicle;
 - (f) an emergency measure undertaken:
 - (i) to preserve the health or safety of an individual;
 - (ii) to protect property; or
 - (iii) by or on behalf of the City;
 - (g) the operation of a bell, tone, whistle or other similar device used as a traffic control device; or
 - (h) normal farm practices.

REQUIRING A PERMIT

- 6.(1) Any person may apply for an exemption permit from this By-law or any provision of it.
- (2) An application for an exemption permit shall be made at least 60 days in advance and shall be accompanied by the applicable fee.
- (3) Despite subsection 6(2), an application for an exemption permit may be made less than 60 days in advance if it is accompanied by the applicable fee.
- (4) Upon receipt of a completed application for an exemption permit, the Director may:
 - (a) issue the exemption permit subject to such conditions as he or she may determine; or
 - (b) refuse the exemption permit.
- (5) In considering an application for an exemption permit, the Director shall have regard to:
 - (a) any negative effects the issuance of the exemption permit may have on neighbouring properties or on the City;
 - (b) any benefits the issuance of the exemption permit may have on neighbouring properties or on the City;
 - (c) any previous violations of this By-law or an exemption permit by the applicant; and
 - (d) anything the Director considers relevant.
- (6) The conditions that the Director may impose on an exemption permit include but are not limited to:
 - (a) the type and volume of the noise that may be made;
 - (b) the times during which noise may be made;
 - (c) the period of time during which the exemption permit is in effect;
 - (d) that a qualified individual or qualified individuals, as determined by the Director, monitor the noise and file a report with Director at the applicant's expense.
- (7) An applicant for an exemption permit may appeal the decision of the Director to the Planning Committee within 10 days of the Director's decision being made.
- (8) Upon receipt of a completed appeal, the Director shall notify the applicant once an appeal date before the Planning Committee has been set and if the applicant does not attend on the appeal date, the Committee may proceed in their absence and the applicant shall not be entitled to further notice in the proceeding.
- (9) Council may uphold or vary the recommendation or recommendations of the Planning Committee or do any act or make any decision it might have done had it conducted the appeal itself and the applicant shall not be entitled to a further hearing of the appeal before Council. The decision of Council shall be final.
- (10) An exemption permit issued under this section expires upon a breach of any of its conditions.

ADMINISTRATION AND ENFORCEMENT**General**

- 7.(1) The Director is authorized to administer and enforce this By-law including but not limited to:
- (a) arranging for:
 - (i) the assistance or work of City staff, City agents or the assistance of police officers;
 - (ii) the making of orders or other requirements and the imposition of conditions as authorized under this By-law;
 - (iii) the obtaining of court orders or warrants as may be required;
 - (iv) the commencement of such actions on behalf of the City to recover costs or restrain contravention of this By-law as deemed necessary;
 - (b) prescribing the format and content of any forms or other documents required under this By-law.
- (2) The Director may assign officers to enforce this By-law and officers so assigned or appointed by Council to enforce this By-law shall have the authority to:
- (a) carry out inspections;
 - (b) make orders or other requirements as authorized under this By-law;
 - (c) give immediate effect to any orders or other requirements made under this By-law.
- (3) The Director may assign duties or delegate tasks under this By-law to be carried out in the Director's absence or otherwise.
- (4) Fees under this By-law, including fees for services provided, shall be as set and approved by Council from time to time.

Entry and Inspections

- (5) The Director or an officer may enter on land at any reasonable time and in accordance with the conditions set out in sections 435 and 437 of the *Municipal Act, 2001* for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- (a) this By-law;
 - (b) an order or other requirement made under this By-law;
 - (c) a condition of an exception permit issued under this By-law; or
 - (d) an order made under section 431 of the *Municipal Act, 2001*.
- (6) The Director or an officer, for the purposes of the inspection under subsection 7(5) and in accordance with the conditions set out in section 436 of the *Municipal Act, 2001*, may:
- (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information in writing or otherwise as required by the Director or an officer from any person concerning a matter related to the inspection; or

- (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- (7) The Director may require the person responsible to pay any costs incurred by the City in exercising its authority to inspect under subsection 7(6), including but not limited to the cost of any examination, test, sample or photograph necessary for the purposes of the inspection.
- (8) The Director or an officer may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under section 438 of the *Municipal Act, 2001*, in accordance with the conditions set out in that section, where he or she has been prevented or is likely to be prevented from carrying out an inspection under subsections 7(5) or 7(6).

Orders and other Documents including Delivery

- (9) If an officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to discontinue the contravening activity.
- (10) An order under subsection 7(9) shall set out:
 - (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and
 - (b) the date or dates by which there must be compliance with the order.
- (11) If an officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to do work to correct the contravention.
- (12) An order under subsection 7(11) shall set out:
 - (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred;
 - (b) the work to be completed;
 - (c) the date or dates by which the work must be completed; and
 - (d) notice that if the order is not complied with, then the work may be done at the expense of the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred.
- (13) Delivery of an order to discontinue a contravening activity made under subsection 7(9) or an order to do work made under subsection 7(11) or of any other document under this By-law may be given personally or by registered mail to the last known address of:
 - (a) in the case of an order to discontinue a contravening activity made under subsection 7(9) or an order to do work made under subsection 7(11), the person who

contravened the By-law, or the owner or occupier of the property where a contravention occurred; and

(b) such other persons affected by the order or other document as an officer determines. Delivery by registered mail shall be deemed to have taken place five business days after the date of mailing.

- (14) In the case of an order to discontinue a contravening activity made under subsection 7(9) or an order to do work made under subsection 7(11), in addition to delivery given in accordance with subsection 7(13), delivery may be given by an officer placing a placard containing the order or other document in a conspicuous place on the property where the contravention occurred.
- (15) Where delivery cannot be given in accordance with subsection 7(13), sufficient delivery is deemed to have taken place when given in accordance with subsection 7(14).
- (16) Where a time frame is set out in an order or other document for carrying out any action, an officer may extend the time for compliance beyond the established time frame provided such extension is required and is acceptable to the officer.

City carrying out Work

- (17) Where a person does not comply with a direction or a requirement, including an order, under this By-law to do a matter or thing, the Director, with such assistance by others as may be required, may carry out such direction, requirement or order at the person's expense.
- (18) Where the costs of doing a matter or thing under subsection 7(17) are estimated to be:
- (a) \$20,000 or less, the Director may proceed without further approval and in accordance with the City's Purchasing Policy; or
 - (b) more than \$20,000, the Director may proceed with approval of an authorized person or of Council and in accordance with the City's Purchasing Policy.
- (19) The City may recover the costs of doing a matter or thing under subsection 7(17) by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an annual interest rate of 15 per cent commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full.
- (20) The amount of the City's costs, including interest to the date payment is made in full, constitutes a lien upon the land, upon the registration of a notice of lien upon the land.

Penalties

- (21) Every person other than a corporation who fails to comply with any provision of this By-law or an order or other direction made under this By-law is guilty of an offence and, upon conviction, is liable to a fine of not more than \$10,000 for a first offence and \$25,000 for a second or subsequent offence.

- (22) Every corporation that fails to comply with any provision of this By-law or an order or other direction made under this By-law is guilty of an offence and, upon conviction, is liable to a fine of not more than \$50,000 for a first offence and not more than \$100,000 for a second or subsequent offence.
- (23) Where a person has been convicted of an offence under this By-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order prohibiting the continuation or repetition of the offence by the person convicted.

TRANSITION, REPEAL, COMING INTO FORCE, ETC.

- 8.(1) All measurements in this By-law are given in the metric short form.
- (2) If a court of competent jurisdiction declares any provision or part of a provision of this By-law invalid, the provision or part of a provision is deemed severable from this By-law and it is the intention of Council that the remainder of the By-law shall continue to be in force.
- (3) All prosecutions and other enforcement processes commenced under By-law No. 03-020 which have not been completed on the day this By-law comes into force shall be completed under By-law No. 03-020 as if it had not be repealed.
- (4) By-law No. 03-020 is repealed as of the day this By-law comes into force.
- (5) This By-law comes into force on the day of its passing.

PASSED this 30th day of November, 2011.



R. Bratina
Mayor



R. Caterini
City Clerk