

Assessment of the application of the Noise By-law for demonstrations

Executive Summary

At the Emergency Preparedness and Protective Services Committee of 16 May 2024, staff were asked to provide a summary of how enforcement discretion is applied to the enforcement of the Noise By-law (By-law 2017-255, as amended).

Staff have reviewed regulations concerning noise and sound amplification contained in the Noise By-law and how they are applied in the context of demonstrations as part of the reviews of the current special event by-laws. Staff assess that current prohibitions regarding the use of sound amplification devices at demonstrations are necessary to preserve, protect and promote public health, safety, welfare and peace and quiet of the inhabitants of the City and that these regulations and their application at demonstrations do not unduly restrict the freedom of expression under the *Charter of Rights and Freedoms* ("the Charter").

Staff note that the Noise By-law is content neutral in that it does not regulate the type of content or expression conveyed through sound amplification devices. Rather, it regulates times, locations and permitted levels for the use of sound amplification for purposes of public health and safety and prevention of public nuisances to ensure community well-being. It is important to note that where enforcement action is required in response to an alleged violation of the Noise By-law, any discretion that is applied by By-law and Regulatory Services is to provide more tolerance for a prohibited activity, rather than less tolerance for a permitted activity.

Staff further assess that creating an exemption for demonstrations in the Noise By-law to de-regulate the use of noise amplification devices would likely have significant harmful impacts for downtown and urban residents, as noted below, and should not be considered without a fulsome review including additional consultation, engagement and research.

Background

The purpose of the Noise By-law is to limit environmental noise to protect public health and safety and to limit public nuisances for community well-being.

Reasonable limits on environmental noise have been found to be critical for public health, particularly in urban environments: "Environmental noise is one of the leading environmental risks for physical and mental health and well-being"¹ according to the

World Health Organization. Harvard Medicine further explains “noise pollution not only drives hearing loss, tinnitus, and hypersensitivity to sound, but can cause or exacerbate cardiovascular disease; type 2 diabetes; sleep disturbances; stress; mental health and cognition problems, including memory impairment and attention deficits; childhood learning delays; and low birth weight. Scientists are investigating other possible links, including to dementia.”² Guidance from the Ontario Ministry of the Environment indicates that “Municipalities can prohibit noise that is likely to disturb the peace, rest and quiet living spaces of residents. Municipalities have the authority to create and enforce bylaws that control or prevent noise disturbances.”³

In addition to regulating noise for the health, safety and well-being of persons under Subsection 10(2) of the *Municipal Act, 2001*, limiting noise also protects residents from nuisance. Staff have reviewed multiple local by-law service requests where megaphones and sound amplification have been used, either deliberately or with disregard, in a manner that causes nuisance and distress for residents, as further discussed in the Unintended Consequences section below.

Regulations on sound amplification devices do not prevent individuals from expressing their opinions. These regulations focus on managing noise levels, not the contents of speech. Individuals can still express their views through various lawful channels and in suitable settings. However, restricting the use of sound amplification devices protects the safety of protesters, bystanders and first responders. By-law and Regulatory Services have reported incidents where demonstrators have used megaphones to countermand orders, directions or advice from law enforcement or emergency personnel. This has led to increased risk and the need for more personnel to manage crowds and traffic.

By-law and Regulatory Services have also recorded incidents where megaphones have been deliberately discharged into the ears of emergency personnel. The [Occupational Health and Safety Act](#) and [Noise Regulation \(O. Reg. 381/15\)](#) limit exposure for sound at 120 decibels to less than 9 seconds a day and 150 decibels to be equally harmful with exposure of less than half of a second. Staff note that megaphones capable of producing these noise levels, with effective ranges of up to 3,000 metres, are readily available online.

Current noise regulations

The current regulations in the Noise By-law were first implemented in 2004 in the *By-law Harmonization – Noise By-law* report (ACS2004-EPS-BYL-0011), although this report notes that the by-law is an amalgamation of the 13 noise by-laws of the former

municipalities. This report further specifies that the general intent of noise regulations is to protect residents from unusual and unnecessary noise.⁴

The general restrictions on noise are contained in Section 2 of the Noise By-law, which prohibits anyone from causing or permitting “unusual noise or noise likely to disturb the inhabitants of the City”. This means that **any** amplified sound is prohibited if it is found to be disturbing to residents.

Section 4 of the Noise By-law specifically establishes when and how sound amplification devices may be used, including restrictions on volume levels, time of day, and locations, as well as prohibiting the use of sound amplification devices:

- in a manner that disturbs the peace and comfort of residents and business operators – Subsection 4(1)(a) and (b); and
- in support of this requirement, on any highway or other public place – Subsection 4(5).

Analysis

The enforcement of the Noise By-law, even during demonstrations, is consistent with the purpose of the by-law in that it is “in the public interest to reduce the noise level in the City of Ottawa, so as to preserve, protect and promote public health, safety, welfare and peace and quiet of the inhabitants of the City”⁵ as established by Council when the by-law was enacted.

The “right” to use sound amplification

Staff note that the use of megaphones and sound amplification devices is not a right guaranteed under Section 2 of the Charter. The imposition of limits on their use, as in the case of Noise By-law with respect to demonstrations may be found to be a reasonable limitation that can be justified under Section 1 of the Charter, if challenged. Section 1 establishes that “The Canadian *Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”⁶

Restricting noise from sound amplification is common among Canadian municipalities. A review of noise regulations in provincial capitals shows that all regulate noise from sound amplification devices including during demonstrations. While some will allow demonstration noise with a permit, none of these cities exempt demonstration noise outright.

DOCUMENT 8

It is further noted that the right to freedom of expression does not include a right to force others to listen. Courts have found that:

It has also been held that freedom of expression assumes an ability in the listener not to listen but to turn away if that is her wish. The Charter does not guarantee an audience and, thus, a constitutional right to listen must embrace a correlative right not to listen⁷, and

The principle behind a constitutional aversion to “captive audiences” is that forced listening “destroys and denies, practically and symbolically, that unfettered interplay and competition among ideas which is the assumed ambient of the communication freedoms⁸.

Courts have also found that a person exercising their freedom of expression in a public place must respect and cannot interfere with the functions of that place, underscoring the general principle that one’s rights are always circumscribed by the rights of others.”⁹

When considering limits on Charter rights, such as those imposed by the requirements in the Noise By-law, the legal standard of reasonableness and proportionality must be applied based on a test established by the Supreme Court of Canada (the Oakes test). The test requires that:

1. The legislative goal of the limitation, or by-law in this case, is pressing and substantial (i.e., the objective is sufficiently important to justify limiting a Charter right), and
2. There is proportionality between the objective of the by-law and the means used to achieve it:
 - a. The limit must be rationally connected to the objective.
 - b. The limit must impair the right or freedom no more than is reasonably necessary to accomplish the objective.
 - c. There must be proportionality between the consequences and benefits of the law.¹⁰

Currently, enforcement of the prohibition against megaphone use occurs when staff have observed negative consequences that are likely to continue or worsen without intervention. This provides for minimal impairment of freedom of expression by empowering enforcement staff to consider the location and surrounding environment, the normal use of the public space and how it is being impacted by the activity as well as how the noise is impacting adjacent residents and businesses.

A progressive enforcement model ensures that people using megaphones are first educated about the requirements of the Noise By-law and then warned that they may face consequences if violations continue. Penalties, such as fines, are reserved for those who knowingly and repeatedly violate the by-law after being educated and warned. This approach ensures fairness and gives individuals the opportunity to correct their behavior before facing punitive measures.

In 2024, By-law and Regulatory Services received 54 service requests related to noise caused by demonstrations and issued 17 charges. These numbers illustrate the approach of general tolerance for noise-related violations by demonstrators, provided the activity is not disturbing the peace and comfort of residents and businesses. This type of discretion is appropriate to minimize potential infringement on freedom of expression. The Noise By-law does not provide for determinations based on the content of expression or the personal political beliefs of the enforcement officer and any charges issued are subject to independent scrutiny through the Courts. This provides appropriate safeguards against potentially biased enforcement.

Other enforcement considerations

In all demonstrations, the Ottawa Police Service has command authority and directs any enforcement actions. The Ottawa Police Service has the discretion, and the responsibility, to assess the specific circumstances of each occurrence. Decisions must balance the need for enforcement against public safety generally and the health and safety of their officers and municipal staff. If immediate enforcement risks escalation and threatens public order and safety, it is often prudent to employ alternative strategies.

Consequences for enforcement of the Noise By-law

Should a person fail to comply with the initial warnings provided by enforcement staff, a Part One fine, commonly referred to as a ticket, may be issued under the *Provincial Offences Act*, (“the POA”). The set fine for these offences is currently \$400 (\$490 with the provincially imposed victim surcharge and taxes). While the Noise By-law also provides for fines up to \$10,000 under Part Three of the POA, in these cases the amount of the fine is determined by the Courts and not by municipal staff. Staff are not aware of any cases involving demonstrations where a Part III summons has resulted in fines of this magnitude.

Unintended consequences of exempting political speech

In an Engage Ottawa survey on demonstrations, noise was identified as the third greatest concern for respondents, after violence and property damage. Responses

indicated that 60 per cent of respondents reported having been negatively impacted by a demonstration on a city street in the previous 24 months. Of those, 50 per cent reported noise as a negative impact, while 80 per cent reported “Harassment or discrimination”, 74 per cent reported “Violence or threats of violence” and 74 per cent reported “Offensive views”. Additionally, 60 percent of respondents indicated impacts on mental well-being as a result of demonstrations.¹¹ These findings underscore the significant negative impact of demonstrations on residents, particularly concerning harassment, mental well-being and noise disturbance.

In addition to mitigating these impacts, the Noise By-law serves to limit negative impacts from other forms of expression. As previously noted, the Noise By-law is content neutral and does not distinguish between types of expression made through sound amplification devices. Staff are concerned that creating an exemption for demonstrations would remove long established protections against nuisance noise that may have harmful consequences for the residents of Ottawa. Previous examples in Ottawa, as identified in a review of service request data include:

- “Street preachers” expressing religious views targeting women and the 2SLGBTQ+ community, including incidents where speakers were aimed at large apartment buildings, at a family planning service provider, into crowded restaurants and into religious institutions during services.
- Loudspeakers aimed at embassies to harass diplomats staff, as indicated by the Ottawa Police Service.
- Megaphones discharged at full volume in close proximity to the ears of enforcement and emergency services staff.
- Unlicensed buskers performing in unauthorized locations.

Creating an exemption for demonstrations would also risk opening the door to unrestricted use of sound amplification for other forms of protected expression, including music and artistic performances as well as forms of speech that are divisive or controversial. This type of exemption for sound amplification devices would put at risk the long-established protections for residents contained in Section 2, 3 and 4 of the Noise By-law regulating bass noise, unusual noise and noise likely to disturb as well as bells, horns, shouting and sound reproduction or amplification devices respectively.

The impact of noise on residents downtown during the Freedom Convoy was documented by the Public Order Emergency Commission Report, the Ottawa People’s Commission on the Convoy Occupation Report and the City’s Auditor General, who

noted “Residents reported numerous negative impacts on their health and well-being. The constant loud honking caused extreme exhaustion due to the persistent loss of sleep, headaches/migraines, an inability to concentrate when working from home, and anxious behaviour in household pets.”¹² Removing restrictions on the use of sound amplification during demonstrations risks similar impacts.

Conclusion

Given that there are relevant cases currently before the Courts, staff recommend against further consideration of this issue until the Courts have had the opportunity to consider these matters and provide further guidance. Staff assess that current regulations and enforcement practices concerning the use of sound amplification devices at demonstrations are reasonable and justifiable in accordance with Section 1 of the Charter. Staff recommend against creating an exemption for the use of sound amplification devices during demonstrations and protests given the anticipated negative consequences for residents and businesses in the downtown core and the possible unintended consequences of exposing residents to other forms of protected expression without the reasonable limits currently established in the Noise By-law.

End notes

¹ World Health Organization, “**How much does environmental noise affect our health? WHO updates methods to assess health risks**”, (<https://www.who.int/europe/news-room/04-08-2024-how-much-does-environmental-noise-affect-our-health--who-updates-methods-to-assess-health-risks>), accessed 23 Jan 2025

² Harvard School of Medicine, Harvard Medicine, Spring 2022, “**Noise and Health**”, (<https://magazine.hms.harvard.edu/articles/noise-and-health>), accessed 27 Jan 2025, p.1

³ Government of Ontario, Ministry of the Environment “**Noise in our environment**” (<https://www.ontario.ca/page/noise-our-environment#>), Section 5, accessed 27 Jan, 2025

⁴ City of Ottawa, **By-law Harmonization – Noise By-law** (ACS2004-EPS-BYL-0011), p.6

⁵ City of Ottawa, **Noise By-law (No. 2017-255), as amended**, (<https://ottawa.ca/en/living-ottawa/laws-licences-and-permits/laws/laws-z/noise-law-no-2017-255#>), accessed 27 Jan 2025

⁶ *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11

⁷ Ontario Court of Justice, **Ontario (Attorney-General) v. Dieleman, 1994 CanLII 7509 (ON SC)**, (<https://www.canlii.org/en/on/onsc/doc/1994/1994canlii7509/1994canlii7509.html>) para 640

⁸ Ibid, para 641

⁹ Ibid, para 642

¹⁰ Government of Canada, **Charterpedia - Section 1 – Reasonable limits**, (<https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art1.html>), accessed June 5, 2023

¹¹ City of Ottawa, **Review of Special Event By-laws, Final Survey Results** (https://engage.ottawa.ca/review-of-special-event-by-laws/news_feed/final-survey-our-analysis)

¹² Office of the Auditor General of the City of Ottawa, **Audit of the City of Ottawa’s Response to the Convoy Protest**, February 2023, p. 7