



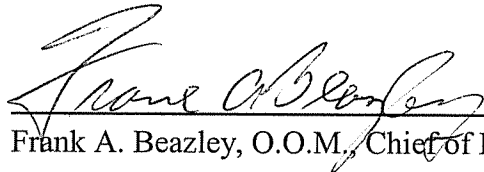
PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

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Halifax Regional Council
March 29, 2005

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:


Frank A. Beazley, O.O.M., Chief of Police

DATE: March 17, 2005

SUBJECT: Norsonic Sound Device for Police Services

INFORMATION REPORT

ORIGIN

Item 10.3.1 (ii) of Halifax Regional Council Meeting held on Tuesday, November 23, 2004.

BACKGROUND

At the Regional Council meeting of November 23, a staff report on the feasibility of police using a Norsonic Sound Analyzer or similar device as a means of measuring noise levels within the Halifax Regional Municipality was requested.

An Information Report was submitted to Regional Council on January 4, 2005 which indicated that a number of factors would have to be considered before such a device is recommended or purchased.

Since that report, additional research was conducted on current Municipal Noise By-Laws across Canada and is provided herein.

DISCUSSION

Recently, research was conducted on current Municipal Noise bylaws across Canada. The main focus of this research addressed the manner in which these bylaws are enforced as they relate to noisy parties and loud vehicles and the use of the Norsonic Sound Metre by Canadian municipalities to assess whether residential noise levels exceed specified standards within these bylaws. Information on these issues was obtained from thirteen (13) municipalities. They included: Ottawa, Hamilton, London, Saskatoon, Regina, Windsor, York (ON), Vancouver, Calgary, Toronto, Edmonton, Victoria and Winnipeg.

Scantek Inc, the American distributor of the Norsonic Sound device, was contacted by email to determine if any Canadian municipalities have purchased this device for the purposes noted. Mr. Richard Peppin, President, responded via email that this device has not been purchased by any Canadian municipalities and only by a few American municipalities. Of the responding Canadian municipalities, none confirmed they utilized the Norsonic Sound Metre to measure noise levels. The most commonly purchased sound measuring devices used by these municipalities include products manufactured by three companies: Bruel and Kjaer, Larson Davis and Lutan.

In Ottawa, Hamilton, Regina, Calgary and Toronto, Bylaw Enforcement or Licensing personnel respond to and investigate complaints involving commercial or industrial noises. These types of noises include air conditioning systems and refrigeration units whose noise levels remain constant at all times. The use of one or more types of sound measuring devices within these municipalities is restricted to these personnel. Calgary's Bylaw Manager conceded that their municipality rarely even uses its sound metres for measuring industrial noises and proceeds by other methods.

None of these municipalities indicated they use noise level measuring devices currently to assess whether residential noise from loud music or mufflers violates stipulated noise levels set out in their respective bylaws. In the majority of cases, police respond to residential noise complaints in progress. Once on scene, they determine whether to lay a charge under the bylaw. This decision is made solely by the officer's subjective observation or in combination with a complainant's statement and/or testimony in court. Winnipeg Police conceded that their Noise bylaw has not been relied on within the last 20 years as an effective method for curtailing residential noise complaints. Police use an alternative method of issuing verbal warnings and advising violators that should they continue they may be fined or charged with causing a disturbance under the Criminal Code and detained for prevention of a continuation of the offence.

Experts who have either a working or technical knowledge in the use of sound level measuring devices strongly urged Halifax against purchasing a sound level metre to investigate residential noises. They have advised that the purchase of a sound level metre would be costly, impractical and ineffective for responding to residential noise complaints involving music, musical amplifications

devices, yelling and loud mufflers. In order for a sound level metre to be accurate and effective, the device must be able to record sound vibrations at a constant level to assess their actual decibel level. The types of noises upon which this report is based are generally classified as social noises whose vibrations are constantly moving thus making them unmeasurable.

Quality integrating sound level metres generally range in price from \$10,000-\$12,000 and must be calibrated annually at significant costs. Further, persons who use sound level metres to measure noise levels are generally required to receive specialized costly training. A Toronto architectural engineer with thirty years experience in this area has strongly urged Halifax not to use these devices to measure moving sounds for purposes of laying charges under the Noise bylaw. He advised that police lack the technical expertise to use these devices and the latter are costly to purchase and maintain. He further stated that using decibel readings for these types of complaints would decrease the conviction rate in Court due to challenges to officers' ability to use the device. This belief was echoed by Saskatoon.

Mr. Peppin, President of Scantek Inc., also offered his extensive experience in responding to requests from municipalities regarding noise bylaws and the apparent inability to successfully prosecute for violations involving loud music and noisy mufflers. He advised that the success of a prosecution on loud music violations often relies on the wording of the bylaw and the ability of officers to cite the specific violations and to enforce the bylaw. He also suggested a response to loud mufflers within noise bylaws by a) limiting the use of defective or not original mufflers or b) regulating sounds near the tailpipe of trucks, automobiles or motorcycles. He maintained it is not hard to enforce the latter if it follows a well-defined standard. Responding Canadian municipalities advised they often rely on the Provincial *Highway Traffic (Motor Vehicle) Act* or Municipal Traffic Bylaw to deal with loud mufflers.

Following completion of this research, a meeting was held on March 2, 2005 to present these research findings. Attending this meeting were representatives from Environmental Management Services, Legal Services and Regional Police. Following a review and discussion of these findings, those present agreed that purchasing the Norsonic Sound Analyzer to measure noise levels would not be a practical alternative to adequately address noise complaints emanating within the Halifax Regional Municipality from loud music, yelling or mufflers. For additional specific information received from the responding Canadian municipalities, please refer to the attachment contained herein.

BUDGET IMPLICATIONS

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

Canadian Municipalities
Enforcement Practices - Noise Issues

<p>Ottawa</p>	<ul style="list-style-type: none"> • New Noise Bylaw (09/04) was approved following major research by a contracted audio engineering company and community consultation • Noise is defined as “any unusual noise or noise likely to disturb the inhabitants of a city” • Noise levels are qualitative and prohibitive by time and place • With the exception of stationary noise, qualitative noise levels are measured determination of a violation is based on the observation of responding members and whether or not the noise disturbs or tends to disturb persons in the vicinity. • Bylaw Enforcement respond to noise complaints until 0200. Police respond between 0200-0600 or when the complaint involves a perceived safety issue. • <i>Technical difficulties abound with measuring sporadic or moving noise thus officer interpretation is considered more valuable than a sound level reading.</i> • Sound Metres only used to measure quantitative sound levels for stationary, usually industrial noises. Units used by Ottawa Bylaw Enforcement are: Bruel and Kjaer 2240 and 2240a
<p>Hamilton</p>	<ul style="list-style-type: none"> • New Bylaw approved 03/01/22 • contains both qualitative and quantitative aspects on noise. • qualitative aspect measured by time and place with a threshold described as “clearly audible at a point of reception” or “noise likely to disturb” Evidence must be collected and must clearly identify the violation. A list of specific questions to ask complainants was provided. • quantitative aspect encompasses commercial or industrial (stationary noise) operations and must be measured by a sound level metre. Those used are the Larson Davis 720 primarily and the Larson Davis 840, both requiring calibration before and after each investigation. • Standards and Licensing Section utilize these devices and respond to most noise complaints. • Police respond only to noisy parties in progress and parties out of control where immediate police intervention is required. Appropriate bylaw charges will be laid as required.
<p>London</p>	<ul style="list-style-type: none"> • Revised and approved in August 2002 This bylaw is very general in content but contains specific prohibitions • qualitative prohibitions by time and place only are set out here. • no sound metres are used in this city.
<p>Regina</p>	<ul style="list-style-type: none"> • Regina Bylaw Enforcement uses the Lutan SL4001 Digital Sound Level device to respond to noise complaints. Most complaints which involve the use of this device are limited to noisy air conditioning units. • The Noise bylaw is seriously outdated. It is anticipated that a major review of this bylaw will be conducted within the next year.

<p>Saskatoon</p>	<ul style="list-style-type: none"> • New bylaw was passed in September 2003. • This bylaw eliminated the need for the complainant to give a statement or attend court. The bylaw, however, does require a person to initiate a complaint. Police cannot act as the complainant as they do not fall within the definition of a “person” under this bylaw. • Fines are progressive and can range from \$100-\$10,000. First offence, a warning is given usually. On a second or subsequent offence, a warning may still be issued but a ticket of at least \$100 can also be issued. The decision to issue a ticket will be based on the specific circumstances surrounding the complaint. • Bylaw contains specific prohibitions and the criteria for determining whether a sound is unreasonably loud or excessive. It also contains a provision that permits a justice hearing the complaint to infer from the evidence of a peace officer relating to the conduct of a person or persons that a sound is unreasonably loud or excessive. • Sound metres are not used by police in responding to these complaints for two reasons: the new bylaw offers general prohibitive sections that give police enough discretion to charge for a violation and the use of the devices is impractical given the costs of training and calibration.
<p>Windsor</p>	<ul style="list-style-type: none"> • Approved in 1980, outdated in comparison to present-day bylaws. • No sound metres are used by this city. • Bylaw contains qualitative prohibitions by time and place only. • Bylaw is enforced by Windsor Police.
<p>York</p>	<ul style="list-style-type: none"> • In the past, enforcement practice by police where loud parties were the issue involved police issuing a Form 9 - Appearance Notice -, laying a Criminal Code mischief charge on the owner and seizing the stereo. The number of loud parties decreased dramatically after this approach became known. • Suggestion was also offered to arrest to prevent the continuation of the offence and then release unconditionally once there was the belief there would be no further continuation of the offence. • subjective approach is used with the philosophy that “If I can hear it on the street, it is too loud.”
<p>Vancouver</p>	<ul style="list-style-type: none"> • Motor Vehicle Noise Abatement bylaw (April 2000) • Contains a list of specific noises which are prohibited and are liable to disturb the peace, quiet, enjoyment, comfort and convenience of individuals or the public • Fines range from \$100-\$2000 for each offence. • Noise Control bylaw (consolidated Nov. 2004) • this bylaw extends responsibility for keeping the noise to a reasonable level to include <i>both the owners or occupants of a dwelling.</i> • Fines range from \$100-\$2000 for each offence.
<p>Victoria</p>	<ul style="list-style-type: none"> • Noise Abatement Bylaw adopted March 04. Stipulates very specific types of noises which are prohibited and very inclusive • Both qualitative and quantitative prohibitions • Minimum fine levied for one of these offences is \$200.

<p>Edmonton</p>	<ul style="list-style-type: none"> • Noise Abatement Bylaw (May 2002) is enforced in twofold manner: Edmonton Police responds to complaints involving vehicle noise, loud parties and other people noise issues. Bylaw Section responds to commercial or industrial noise complaints. • Noise is defined as “any sound that is reasonably likely to annoy or disturb the peace of others”. • Bylaw refers to sound level metres but <i>because of difficulties with prosecutions and the cost of maintaining the devices, a subjective approach is used to deal with these complaints</i>. Specific sections of the Bylaw - 201, 202 and 203 - allow this approach. • Witness statements are completed by complainants and form the basis of charges. With this approach, officers need to review the statements to ensure the elements supporting the charge are there and the complaint is reasonable in nature. The requirement to provide a statement and the potential to be compelled to attend Court is felt to discourage frivolous complaints.
<p>Winnipeg</p>	<ul style="list-style-type: none"> • Winnipeg Police are responsible to enforce the Noise Control Bylaw (last amended Dec/02) • Priority or planned response officers are dispatched to investigate noise complaints. • In-progress noise complaints require a dispatched unit to observe the noise level outside. Some persons are given a verbal warning while others are warned by issuance of a Summons under the bylaw. The decision on how a person will be handled depends on the circumstances of the complaint and the discretion of the responding officer. • Fines issued under this bylaw are determined by the magistrate hearing the case and are based on <i>the number of complaints received, the noise level and other factors provided by the investigating officer</i>. Provincial Offence Notices are issued for these offences. • Noises such as loud mufflers, radios/boom boxes emanating from motor vehicles and chirping/squealing tires are dealt with pursuant to the Provincial <i>Highway Traffic Act</i>. Fines under the Act range from \$54-\$135. • Citizens/complainants who witnessed the offence are required to attend court. Their attendance is facilitated via subpoena. If the complainant refuses to give a signed statement or to appear in court, the case either does not go ahead or is dismissed. • WPS does not get involved in measuring sound levels. They consult with Manitoba Conservation Environmental Operations Division. The only types of sound for which the noted agency will use a measuring device involve mechanical devices such as air conditioners, air moving devices and pumps. • The Winnipeg Noise Control Bylaw has been used only once in the last 20 years. Most complaints are effectively handled with the issuance of a verbal warning. Officers do advise violators that should they continue they may be fined (no fine amount given) or charged with causing a disturbance and may be detained for prevention of a continuation of the offence

<p>Calgary</p>	<ul style="list-style-type: none"> • Community Standards Bylaw, Part 9, addresses the Regulation of Noise, and was approved May 04. Speaks to noise and the measuring of same with a Type 2 integrating sound metre. <i>Noise complaints on private property</i> are dealt with under this bylaw. Anybody - <i>tenants and landlords</i> - can be charged under this bylaw for a noise offence. • Upon first offence, Bylaw Services prepares and sends a letter to those persons against whom a complaint was received. When the property involves a rental, both the tenant and the owner receive a letter warning them of the repercussions of subsequent offences: both will be charged the next time. This approach normally results in a tenant eviction within weeks of the subsequent charge. • Bylaw Services respond to all noise complaints with the exception of noisy parties - Police respond here. Bylaw works 7AM-10PM and for special events with Police. • Fines for noise which disturbs a person range from a minimum of \$50 to a specified penalty of \$100 in contrast to fines for over-height grass which range from \$100-\$300! This bylaw permits escalating fines for subsequent noise offences and permits Bylaw Services to set the fine amount up to \$10,000. If no fine is specified, the magistrate hearing the complaint can set the fine based on the circumstances. • <i>Vehicle noise</i> is dealt with under the Calgary Traffic Bylaw, Subsection 51.1(1) "A person must not make, continue or allow to be made or continued any objectionable noise." The determination of what is objectionable noise is subjective and left to the discretion of the bylaw officer investigating the complaint. • <i>Highway noise</i> is dealt with under Provincial legislation. • Persons who make a noise complaint are advised at the time of the complaint that their attendance in court is mandatory and that failure to appear on the specified court date will result in a warrant being issued for their arrest. For this reason, there is some difficulty getting persons to formally put their name on a complaint. Someone other than the police or bylaw services officers must act as the complainant as the officers do not meet the definition of a "person" under the bylaw. • Sound metres - Bruel and Kjaer 2236 and Larson 824 - are used very rarely, only then by Bylaw Services and generally only for industrial noise. These metres range from \$10,000-\$12,000 and must be calibrated yearly with operators receiving specific training on them.
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<p>Toronto</p>	<ul style="list-style-type: none"> • New bylaw passed 03/02/07 • qualitative prohibitions by time and place • Noise is defined as unwanted sound, which is “likely to disturb the quiet, peace, rest, enjoyment, comfort or convenience of the inhabitants of the City” • Sound metres are not used for qualitative or moving sound. These type of noise complaints are dealt with using a subjective approach and the point of reception measurement (eg., Can you hear the music outdoors 3-4 houses away?) • Sound metres are only used to measure stationary sound levels and/or interior noise dealing with architectural designs. Toronto strongly urged Halifax not to used these devices to measure moving sounds for purposes of laying charges under the bylaw. <i>Police lack the technical expertise to use these metres and the latter are costly to purchase and maintain. Using decibel readings for these type of complaints, I was advised, would decrease the conviction rate in court due to challenges to officers’ ability to use the device.</i> • Defective or loud mufflers are an issue in Toronto but police generally attempt to deal with them through the <i>Highway Traffic Act</i>. These offences along with noise complaints involving boom boxes are not ticketed under the Noise Bylaw due to the grey area in which they fall and the enormity of the workload for police. • With this bylaw, first time offenders are ticketed \$125 + costs. A second offence will merit a Summons + \$350. Third and subsequent offences may entail a fine of any amount upwards of \$5000.
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