

MEMORANDUM

TO: Mayor Kelly and Members of Council

CC: George McLellan, Chief Administrative Officer
Wayne Anstey, Municipal Solicitor

FROM: Jan Gibson, Municipal Clerk

DATE: April 20, 2005

SUBJECT: By-Law N-202 , An Amendment to By-Law N-200, Respecting Noise

On October 28, 2003 Council held a public hearing on By-Law N-202, An Amendment to By-Law N-200 Respecting Noise. At that time Council was advised that under the current noise bylaw (N-200) in order to obtain a conviction for a violation it is necessary for the By-Law enforcement officer to identify person or persons actually making the noise. As a result, neither the landlord or the tenant is automatically issued a ticket. By-Law N-202 proposed amendments would make both the owner of the property and the occupier (tenant) liable for any activity that took place on the property.

After hearing from the public, and without a vote being taken, Council approved the deferral of the motion to permit time for work with landlords to get the needed changes made to the Tenancies Act.

Information has been received from the Provincial Government indicating they are not prepared to make changes to the Tenancies Act. Therefore the motion for Second Reading of By-Law N-202 is being brought back before Council. Those members of Council eligible to vote on this matter are: Mayor Kelly, Councillors Streach, Sloane, Uteck, Fougere, Adams, Goucher, Rankin, Meade, McInroy, Smith, Walker, Mosher and Harvey. (Councillor Johns was absent from the meeting).

Thank you.

Jan Gibson.


Office of Municipal Clerk
Deputy Municipal Clerk

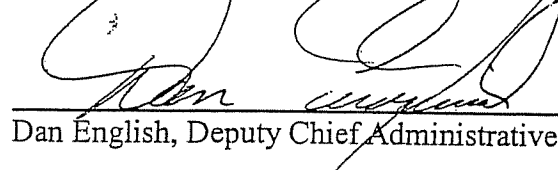
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Halifax Regional Council
September 23, 2003
October 7, 2003

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:


George McLellan, Chief Administrative Officer


Dan English, Deputy Chief Administrative Officer

DATE: September 10, 2003

SUBJECT: Councillor Uteck -
Proposed Amendment to By-law N-200 Respecting Noise

ORIGIN

At the meeting of Halifax Regional Council held on September 09, 2003, a staff report was requested recommending changes to By-Law N-200 Respecting Noise making the assessed property owner as well as tenants responsible for any tickets issued as a result of complaints received in violation of the Noise By-Law.

RECOMMENDATION

It is recommended that Halifax Regional Council approve in principle the amendments to By-Law N-200 Respecting Noise attached as Appendix "A" to this report and direct staff to arrange for their formal adoption.

BACKGROUND/DISCUSSION

The current version of By-Law N-200 Respecting Noise makes it an offense for any person to engage in any activity that unreasonably disturbs or tends to disturb the peace and tranquillity of a neighbourhood. This means that in order to obtain a successful conviction, the prosecutor must prove beyond a reasonable doubt what individual or individuals actually engaged in the activity complained of. As a practical matter, it is often difficult for the police officer, by-law enforcement officer or neighbour to identify who was actually making the noise.

Most noise complaints originate from private property. It is our opinion that it is not an unreasonable expectation that the legal occupant of premises, whether that is the owner or a tenant, should be required to exercise control over the activities that take place on the premises.

Furthermore, the majority of noise complaints in HRM originate from premises rented to students in the areas surrounding the universities. In most cases, the owner/landlords of these premises exercise little, if any, control over the activities taking place on these premises. Furthermore, the occupants of these premises are often not permanent residents of the municipality and by the time the charges make their way through the court system, the occupants cannot be found. Therefore, it is our opinion that some responsibility should be placed on the owners of the premises for the activities taking place on them.

The amendments to By-Law N-200 attached as Appendix "A" would address these issues by making both the owner and occupant of the premises liable for any activity on the premises in addition to the person actually engaged in the activity.

BUDGET IMPLICATIONS

There are no direct budget implications to the proposal. However, the amendments should make the enforcement of the By-Law more effective and thereby reduce the waste of resources which currently takes place in attempting to obtain compliance with the By-Law.

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.

ALTERNATIVES

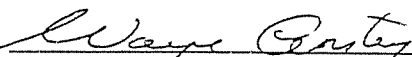
There are no recommended alternatives.

ATTACHMENTS

Appendix "A" - Draft By-Law N-202

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared and Approved by:



Wayne Anstey, QC, Director of Administrative Services

Appendix "A"

HALIFAX REGIONAL MUNICIPALITY

BY-LAW N-202

RESPECTING NOISE

BE IT ENACTED by the Council of the Halifax Regional Municipality that By-Law N-200 Respecting Noise be amended as follows:

1. Section 2 of said By-Law N-200 is amended by adding immediately following clause (d) thereof, the following clause:
 - (da) "occupier" means
 - (i) a resident of a property;
 - (ii) a person in possession of a property; or
 - (iii) a person who has responsibility for or control over a property or the activities performed therein.
2. Subsection (3) of Section 3 of said By-Law N-200 is repealed.
3. Said By-Law N-200 is amended by adding immediately following Section 3 thereof, the following Sections:
 - 3A.
 - (1) No owner shall allow, suffer or permit to occur on any property of which the person is the owner, any activity prohibited by Section 3.
 - (2) No occupier shall allow, suffer or permit to occur on any property of which the person is the owner, any activity prohibited by Section 3.
 - 3B For the purpose of a prosecution pursuant to Sections 3 and 4, evidence that one neighbour is unreasonably disturbed by a noise is prima facie evidence that the neighbourhood is unreasonably disturbed by the noise.