



Committee of the Whole Report For the Meeting of December 9, 2021

To: Committee of the Whole
From: Curt Kingsley, City Clerk
Subject: Noise Bylaw Review

Date: December 1, 2021

RECOMMENDATION

That Council direct staff to do further analysis of the issues related to the most common noise-related complaints as outlined in this report and bring forward amendments to the Noise Bylaw to address those issues.

EXECUTIVE SUMMARY

A Strategic Plan action item is to review the Noise Bylaw. The purpose of this report is to share staff's preliminary findings and to seek Council direction on the next steps. Staff evaluated enforcement challenges and noise-related complaints.

The Noise Bylaw is not currently effective or efficient in addressing noise and noise-related complaints. Challenges with the Bylaw means that complaints are numerous, onerous, and often not in relation to regulated activities. It also means that enforcement requires more staff, is labour intensive, and often does not deter noise violations. Finally, there have been few changes to the Bylaw since it was adopted in 2003 making it anachronistic and often inadequate for addressing issues in the contemporary sound environment of the city. Staff input identified potential ways to improve effectiveness and efficiency of the Noise Bylaw, such as a review of enforcement capacity, the complaints system, the ticketing system, and other matters.

Significant noise-related complaints are in regard to noise at night related to hospitality venues and other sources, construction, garbage collection, and power equipment. Staff identified potential remedies to issues with regulating noise from each of these sources which could be further examined. Council may wish to limit the next steps which would address effectiveness and efficiency of the Noise Bylaw to the most common noise-related complaints.

Staff recommend a targeted approach addressing common noise-related complaints that could achieve progress in a timely manner. Staff would develop amendments to the Noise Bylaw and other tools to address noise related to construction, garbage collection, power equipment, and noise at night related to hospitality venues and other sources. Amendments are needed to enforce the Noise Bylaw and potentially additional staff. The prioritized approach to improvements to the Noise Bylaw would also serve as a pilot for further improvements in the future.

PURPOSE

The purpose of this report is to report back on staff's preliminary review of the Noise Bylaw and to seek Council direction on next steps.

BACKGROUND

Strategic Plan

A Strategic Plan action item in 2020 continuing in 2021 is to review the Noise Bylaw.

Noise Bylaw

The *Noise Bylaw 03-012* establishes noise zones within which certain noise levels may not be exceeded between prescribed times. There are three noise zones: the Quiet District, the Intermediate District, and the Activity District. Staff measure sound levels with an approved sound level meters. The Ticket Bylaw sets specific fines ranging from \$250 to \$500. The Noise Bylaw is attached as Attachment A.

In a residential area between 10:00pm and 7:00am, the Noise Bylaw prohibits making, causing, or allowing to make or cause sound or noise that disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort, or convenience of persons. It prohibits making, causing, or allowing to make or cause a noise or sound by:

- shouting and using a megaphone or sound amplification devices in public places;
- playing any radio, phonograph, cassette, or CD player, television, musical instrument, or sound amplification device;
- operating any automobile, truck, motorcycle, bus, or other motorized vehicle in prescribed manners; and,
- keeping an animal in a Quiet District that emits persistent noise that can be easily heard from another premises.

Other restrictions include audio advertising that can be heard from the street, commercial premises from using equipment above permitted noise levels, and use of power equipment, leaf blowers, and chainsaws, or construction above permitted noise levels.

The Noise Bylaw provides exemptions for:

- public service or emergency vehicles;
- vehicles, boats, or trains to signal danger or warning;
- garbage collection within permitted hours;
- municipal works;
- emergency repairs to buildings that cannot be delayed;
- permitted events within permitted noise levels;
- the noon cannon at Laurel Point;
- bells and chimes churches;
- legally installed carillons; and,
- use of a Community Care Facility.

Noise-related complaint data (last updated November 23, 2021)

Table 1 demonstrates the number of noise-related complaints each year from 2017 to 2021.

Table 1: Number of Noise-Related Complaints

YEAR	NUMBER OF COMPLAINTS
2017	305
2018	370
2019	714*
2020	765
2021 (YTD)	693

*IMPLEMENTED ONLINE REPORTING TOOL

The City receives noise-related complaints through an online reporting portal in one of the following categories: amplification, construction, garbage collection, power equipment, and other sources of noise. Table 2 demonstrates the type of noise-related complaints by category and year from 2018 to 2021. The issues and analysis section examines the most common noise-related complaints.

Table 2: Type of Noise-Related Complaints

	2018	2019	2020	2021 (YTD)
AMPLIFICATION	62	164	186	190
CONSTRUCTION	114	200	218	162
GARBAGE COLLECTION	29	49	38	47
OTHER SOURCES OF NOISE	104	193	184	189
POWER EQUIPMENT	57	106	139	105

The Victoria Police Department also receives calls for services in relation to disturbances. Attachment B – Noise Related Calls for Service to Victoria Police Department demonstrates the number of calls about disturbances by neighbourhood from 2016 to 2021. This data was last updated on August 9, 2021. Most disturbances are in relation to noise, although it may not be in relation to a loud noise or one regulated by the Noise Bylaw.

ISSUES AND ANALYSIS

Staff reviewed noise-related complaints data and worked with departments to identify common noise-related complaints and potential solutions. Staff identified some general issues are related to the effectiveness and efficiency of the Noise Bylaw, which creates enforcement challenges, as well as specific issues with noise from hospitality venues, construction, garbage collection, power equipment, other sources of noise, and noise at night. The staff recommendation for the next steps is based on these preliminary findings.

General Bylaw Issues

The issues with enforcing the Bylaw are related to enforcement capacity, the complaints-based system, the ticketing system, and efficacy/relevance of some Bylaw sections.

Enforcement capacity

The Bylaw is difficult to enforce due to staffing levels required to administer the Bylaw. For most noise-related complaints, the Bylaw requires staff to be available on-call to be present at the time of a complaint to make a sound level measurement with an approved sound level meter. When staff are not able to be present to conduct a sound level measurement, complainants are often unable to produce evidence of a violation to the standard set in the Noise Bylaw, which limits staff from taking enforcement action.

Potential remedies are to amend the Bylaw and increase enforcement staff. Potential amendments could be to accept sound level measurements from other devices, and accept multiple independent complaints instead of sound level measurements. Some amendments could make administration more efficient and would likely decrease the amount of additional staff that may be required to administer the Bylaw more effectively. Evaluation of staff capacity will be a consideration in order to ensure amendments can be properly administered for effectiveness and resolution of violations.

Without bylaw amendments, a preliminary calculation of staffing to administer the Bylaw 24/7 indicates that each week this would require at least 7 additional Bylaw officers for 28 shifts of 8 hours in addition to Police officers to accompany Bylaw officers for safety reasons.

Complaints system

The Bylaw requires either a sound level measurement or evidence that a source of noise was occurring outside permitted hours. At current staffing levels, staff are typically not available to conduct sound level measurements. Instead, staff evaluate complaints received in the online portal system to determine if a complaint is regarding a regulated activity and if the evidence provides sufficient proof of a violation.

For complaints about a regulated activity, the complainant must be able to prove that there has been a violation. Staff get more information or evidence, if possible. Even with sufficient evidence, if a person challenges an alleged violation in court, then many complainants are unwilling to provide a testimony. As a result, few noise-related complaints may be deemed to be violations due to the difficulty of proof. Possible remedies include alternative ways of gathering evidence such as enabling others to make a sound level measurement or allow another type of evidence to prove a violation such as multiple independent reports.

Municipal Ticketing Information system

The current ticketing system is administratively inefficient for addressing many violations of the Noise Bylaw. The City uses the Municipal Ticketing Information system for noise-related violations. The MTI enables staff to deliver a ticket to the alleged offender without first visiting a provincial court justice to swear the information and obtain a summons. The alleged offender may then admit to the offence and pay the penalty without appearing in court, or dispute the ticket. The penalty may not exceed \$1000.

Shifting from the MTI system to the “bylaw notice adjudication system” would eliminate the requirement to deliver a ticket to the alleged offender in person, use a timely dispute resolution-based approach to obtaining independent decisions, and avoid the need for legal counsel and unnecessary attendance of witnesses.

The requirement under the MTI system to deliver a ticket to the alleged offender in person deters the City from issuing tickets because of the time required to deliver in person rather than by mail.

A possible remedy is to direct staff to evaluate the feasibility of ticketing Noise Bylaw violations through the “bylaw notice adjudication system”, which the City uses to address parking contraventions.

Efficacy and Relevance of the Noise Bylaw

In addition to the above mentioned issues, the Noise Bylaw has not been significantly reviewed or updated since 2003. During the preliminary review of the most common noise-related complaints, it is evident that the Bylaw is not sufficiently comprehensive to regulate noise from construction and garbage collection services outside permitted hours and too broad to regulate noise at night. These issues are examined in the next section and could be addressed by way of a targeted approach to amendments to the Noise Bylaw and other tools to addressing specific sources of noise.

The Bylaw also contains noise zone boundaries that establish the Quiet District, the Intermediate District, and the Activity District, which have not been updated along with changes to land use and increasingly mixed land use areas.

Specific Bylaw Issues

This section provides more details about the most common complaints in the five complaint categories in the City's online complaint portal system. Each section identifies some issues in the Noise Bylaw. When possible, each section also includes potential remedies identified by staff during this preliminary review that could be further examined.

Hospitality Venues

The most common complaints are about noise from hospitality venues at night. With more residential construction projects in the downtown neighbourhood nearby hospitality services, there are increasing noise-related complaints about this issue. The City addresses these issues through Bylaw Services with assistance from the Downtown Late Night Program staff coordinator. Some tools have been developed to address noise issues, but further work is needed.

As part of the City's work on a Municipal Alcohol Policy, the Responsible Hospitality Institute prepared a report in 2019. This report proposes some options for mitigating noise-related concerns in relation to hospitality venues in conflict with other uses. Some of the suggested options are relevant and could be evaluated during this review. These include recommendation such as:

- resourcing Bylaw staff at night,
- building with sound mitigation in mind,
- publishing sound regulations, and

Council may wish to direct staff to examine options, including some existing tools used by the Downtown Late Night Program, and the Responsible Hospitality Institute's proposed next steps, for addressing noise from hospitality services at night.

Construction Noise Outside Permitted Hours

Construction noise outside permitted hours is the most common noise-related complaint.

Construction is allowed between 7:00 am and 7:00 pm on a weekday, and 10:00 am and 7:00 pm on Saturday. No construction is permitted on Sundays and holidays. The Chief Building Inspector may provide an exemption to construction if it is impossible or impractical to comply. Construction noise may reach 85 decibels during permitted hours.

Some issues are noise on construction sites outside permitted hours that are not construction activities (e.g., workers arriving or leaving outside permitted hours), quiet construction activities outside permitted hours (e.g., painting), and the noise exemption process. Enforcement is difficult because companies often may opt to continue work and pay a fine rather than to delay work. Also, construction companies may apply for an exemption if it is impossible or impractical to comply, however the process is time-consuming and more costly than the fine so companies may prefer to continue work without an exemption.

Council may wish to direct staff to review the City's regulation of construction activities to identify tools to reduce construction activities outside permitted hours, identify construction activities that could be allowed outside permitted hours, and simplify the noise exemption process.

Garbage Collection Outside Permitted Hours

Another common type of noise-related complaint is garbage collection outside of permitted hours.

The Noise Bylaw does not apply to garbage collection services between:

- 6:00 am and 8:00 pm within an Activity District
- 6:30 am and 8:00 pm on a weekday
- 10:00 am and 8:00 pm on a Saturday, Sunday, or holiday.

Key issues include collection outside permitted hours, unclear authority to regulate noise from ancillary garbage collection services and issue fines to these ancillary services, unclear authority to issue fines to customers of garbage collection services, poor garbage collection facility design and sound proofing in buildings, and vehicle motion alarms.

Council may wish to direct staff to review permitted hours of operation, clarify authority to regulate ancillary garbage collection services, clarify authority to fine service providers and customers of garbage collections services, identify alternatives to vehicle motion alarms, and address noise from garbage collection services through other initiatives.

Power Equipment

Common noise-related complaints are about power equipment such as heating, ventilation, and air conditioning units, leaf blowers, and hot tubs.

The Bylaw establishes conditions for noise from power equipment including permitted sound levels and hours of operation. Use of power equipment is permitted between 8:00 a.m. and 8:00 p.m. seven days a week including on holidays. The maximum noise level from power equipment is 75 decibels. The Bylaw specifies sound levels and hours of operations for leaf blowers and chainsaws.

Possible remedies are amendments to the Bylaw to limit use of some power equipment to 3 consecutive hours between 8:00 am and 8:00 pm on Sunday and holidays, and to limit the use of hot tubs and heating, ventilation, and air conditioning units overnight. Another possible remedy would be to ensure sound mitigation for rooftop or other mechanical and HVAC units in new buildings.

Council may wish to direct staff to review options to limit the use of power equipment on Sundays and holidays, and options to limit noise from hot tubs and HVAC units when not in active use or at night.

Other Sources of Sound

This category in the online complaint portal includes noise-related complaints for miscellaneous sources of noise. Many of these complaints are in relation to unregulated activities and uses, and environmental noise. Below is a list of some recurring complaints:

- daytime noise,
- traffic noise,
- people talking,
- children playing,
- noise between neighbours on the same parcel of land,
- parties,
- delivery trucks,
- back up beepers, and
- bird repellants.

Addressing environmental noise could require a look at the City's built environment, which is not regulated by the Noise Bylaw. The City takes into consideration noise mitigation for specific sources of noise and environmental noise to some extent in land use and transportation decision-making. Council may wish to direct staff to explore further noise mitigation although it is not recommended at this time in order to focus limited staff resources on improving the Noise Bylaw.

Noise at Night

One significant issue is noise heard in a residential area at night. The Bylaw prohibits noise between 10:00 pm and 7:00 am which disturbs or tends to disturb the quiet, peace rest, enjoyment, comfort, or convenience of persons in the neighbourhood or vicinity. In effect, any sound that is disturbing to a person in a residential area at night would be a bylaw violation. This creates an unrealistic standard for noise at night in an urban municipality and provides problematic discretion to address some noises. Amendments to the Bylaw are needed to ensure the regulations on noise at night are clear, specific, and enforceable.

Council may wish to direct staff to identify options to improve the clarity and enforceability of regulations of noise at night.

OPTIONS AND IMPACTS

Option 1 – Targeted amendments to the Noise Bylaw (Recommended)

This option directs staff to develop changes to the Noise Bylaw and other bylaws and policies if necessary to address noise from construction, garbage collection, use of power equipment, and noise at night from hospitality or other sources. To effectively address these issues, the analysis would consider enforcement challenges with the Noise Bylaw noted in the report in addition to noise management for those sources of noise.

Implications:

- Addresses most common noise-related complaints
- Allows comprehensive review of a few issues
- Could act as a pilot for addressing other noise-related issues
- Amendments could be developed with existing resources, depending on desired timeline
- Competing priorities and interdependencies with other departments will affect the timing
- More enforcement staff may be required, but this option improves responsiveness to complaints

Option 2 – Comprehensive amendments to the Noise Bylaw

This option directs staff to bring forward amendments for all regulated activities in the Noise Bylaw.

Implications:

- Addresses noise-related issues and noise-related complaints
- Increases effectiveness and efficiency of enforcing Bylaw
- Amendments could be developed with existing resources, depending on desired timeline
- Longer term timeline and deliverables to be determined

Option 3 – Report back with resourcing requirements to enforce Noise Bylaw as is

This option directs staff to report to Council with a needs assessment of staff required to enforce the Noise Bylaw more effectively without any bylaw changes.

Implications:

- Report back could be completed in a short timeline
- Report back could be completed with existing staff resources
- Noise Bylaw would be costly and inefficient to enforce as is
- On-going enforcement issues for construction, garbage collection, power equipment, hospitality venues and other sources of noise at night, and other types of noise

Accessibility Impact Statement

The recommendation has no accessibility implications.

2015 – 2018 Strategic Plan

This work addresses the Strategic Plan item to conduct a Noise Bylaw review and the recommendation puts forward the proposed next steps to address complaints and issues identified during the review.

Impacts to Financial Plan

The recommendation has no Financial Plan implications and can be achieved with existing resources.

Official Community Plan Consistency Statement

The recommendation has no Official Community Plan implications.

CONCLUSION

The Noise Bylaw is not currently effective or efficient in addressing noise and noise-related complaints. Amendments are needed to enforce the Noise Bylaw and potentially additional staff. Noise-related complaints data shows that noise at night related to hospitality venues and other sources, construction, garbage collection, and power equipment are the most common noise-related complaints. Staff's recommendation to focus on targeted amendments to the Noise Bylaw would achieve progress in a timely manner, leverage staff experience with addressing these noise-related complaints, and enable the City to use each amendment as a pilot to guide future improvements.

Respectfully submitted,

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Legislative and Policy Analyst

Curt Kingsley
City Clerk

Susanne Thompson
Deputy City Manager

Report accepted and recommended by the City Manager

List of Attachments

Attachment A: Noise Bylaw 03-012

Attachment B: Noise Related Calls for Service to Victoria Police Department