



THE CORPORATION OF THE TOWN OF AMHERSTBURG

OFFICE OF THE CAO

MISSION STATEMENT: *Committed to delivering cost-effective and efficient services for the residents of the Town of Amherstburg with a view to improve and enhance their quality of life.*

Author's Name: Bill Tetler	Report Date: April 21, 2022
Author's Phone: 519 736-0012 ext. 2251	Date to Council: May 24, 2022
Author's E-mail: btetler@amherstburg.ca	Resolution #: 20200113-0056

To: Mayor and Members of Town Council

Subject: Amendment to By-law 2001-43

1. **RECOMMENDATION:**

It is recommended that:

1. The report from the Manager of Licensing and Enforcement dated April 21, 2022 regarding an amendment to By-law 2001-43 **BE RECEIVED for information**;
2. Administration **BE DIRECTED** to encourage, educate and work with entities or individuals who are planning outdoor entertainment events to apply for a noise exemption for each outdoor entertainment event that has the potential to violate *By-law 2001-43, A By-law Respecting the Emission of Sound in the Town of Amherstburg*;
3. Administration **BE DIRECTED** to amend By-law 2001-43 to include within the noise exemption application process a provision that the applicant pay the cost of placing notice of such waivers in the local newspaper and that the notice be placed on the Town website;
4. Administration **BE DIRECTED** to develop and conduct public education regarding the By-law 2001-43; and,
5. Resolution 20200113-006 **BE RESCINDED**.

2. **BACKGROUND:**

On July 31, 2018 By-Law Enforcement received a noise complaint under By-law 2001-43 for amplified music on an outdoor patio located at 281 Dalhousie St. the location of the Royal Canadian Legion Branch 157, (the "Legion"). On August 7, 2018 a meeting was held between the complainant, the Legion and the former CAO with the following outcome;

- The Legion committed to look into an in-house sound system providing better controls over sound levels;

- Both parties agreed to work on reconfiguring the current sound system to tolerable noise levels; and
- Both parties agreed to continued communications with each other while working towards a mutual agreement of resolve.

Based on the meeting and the fact that no additional complaints were filed for 281 Dalhousie Street on August 21, 2018 the complaint against the Legion was closed. A search of the By-law Enforcement database does not show any other complaints lodged for noise against 281 Dalhousie Street since the initial complaint.

Council will recall that at its meeting held January 13th, 2020, the following resolution was passed:

Resolution # 20200113-006
Moved by Councillor McArthur
Seconded by Councillor Prue

That:

1. Administration **BE DIRECTED** to amend Noise By-law 2001-43 to allow commercial properties with patios to request seasonal exemptions to allow for outdoor music and to allow a reading of 70 decibels from the source of where music is produced.

By-law Number 2001-43, A By-law Respecting the Emission of Sound in the Town of Amherstburg provides the following information as it relates to Section 3 on sound from loudspeakers;

“The operation of any electronic device or group of connected electronic devices times incorporating one or more loudspeakers or other electro mechanical transducers, and intended for the production, reproduction or amplification of sound operated in such manner or with such volume as to disturb the peace, quiet, comfort or repose of any individual in any office, dwelling house, apartment, hotel, hospital, or any other type of residence.”

3. **DISCUSSION:**

The principal purpose and intent of the Noise By-Law is to regulate noise that is likely to disturb the inhabitants of the Town of Amherstburg. *By-law 2001-43, A By-law Respecting the Emission of Sound in the Town of Amherstburg*, specifies that noise is clearly audible at a **point of reception** located in the area of the municipality indicated within a prohibited time shown for such an area. “Point of reception” is defined to mean “any point on the **premises of a person** where sound or vibration originating from **other than those premises is received**”. The noise that was at the root of the initial complaint emanated from the Royal Canadian Legion which has been in existence since 1922 and is located at 281 Dalhousie St. It should be noted that this is the first complaint that has been received with respect to outdoor entertainment at the Legion. In order to gather more information on the issue, the Legion commissioned a Noise Study which was completed by Colin Novak from Akoustik Engineering Limited and was presented to Council on January 13, 2020 (Attached as Appendix “A”). This study contained specific and general information as it relates to typical sound levels including band noise from 281 Dalhousie Street. It was after considering this report that Council

directed Administration to amend *Noise By-law 2001-43* to allow commercial properties with patios to request seasonal exemptions to allow for outdoor music and to allow a reading of 70 decibels from the source of where the music is produced.

Administration researched comparable municipalities in Windsor/Essex County and elsewhere in Ontario regarding whether or not they had a provision for noise measurement using a decibel reader in their by-laws and found the following:

MUNICIPALITY	DECIBEL PROVISION IN BY-LAW?
Windsor	No
Chatham	No
Leamington	No
Lasalle	No
Tecumseh	No
Essex	No
Kingsville	No
Lakeshore	No
Peterborough	No
Hamilton	No

From this review, Council will note that no other municipality in the area has a provision for a noise measurement using a decibel reader within its noise or nuisance by-laws. This is likely due to the fact that, although there are “decibel reading apps” available for download to most smart phones, that type of technology is not admissible as evidence once charges are laid and are being considered by the Court, making enforcement of decibel levels difficult. The enforcement challenges include:

1. The fact that decibel reading technology is ever changing and the cost for professional equipment which will be considered credible by the Court ranges from a few hundred dollars into the thousands of dollars per unit;
2. In order for evidence taken by an Officer to be admissible in Court, the Officer using the decibel reader must also be properly trained and accredited in the use of the decibel reader;
3. In order to enforce a decibel level for the emission of sound, an Enforcement Officer would have to attend the call for service while the alleged offence is happening which will be difficult as most offences occur later at night when By-Law Enforcement is not on duty. Scheduling Officers at the probable times of these events would require the payment of overtime. Further, by the time the Officer attends at the event, there is a good chance that the sound emission will have stopped or will have been lowered again, making enforcement a challenge.

Rather than amending the Noise By-law to include particular decibel levels, what Administration would recommend is that an entity or individual that wishes to have outdoor entertainment apply to the Town for a noise exemption for each outdoor entertainment event that has the potential to violate *By-law 2001-43, A By-law Respecting the Emission of Sound in the Town of Amherstburg*. In February 2013, the Town of Amherstburg adopted the Noise By-law Exemption Requests Policy. The policy does inform residents within 60 metres of the property for which relief is being sought. If the event would affect a large number of residents or community at large, an ad will be

placed in the local paper for one week advising of the application to provide residents an opportunity to submit comments/concerns. (Attached as Appendix "B").

Further, in order to educate the public regarding the Noise By-law, exemptions from the by-law and the impact that outdoor events that have the potential to generate louder sound levels can have on neighbourhoods, Administration recommends that the By-law Division develop educational materials to be placed on the Town's website and distributed in the Community in order to promote best practices and the general concept of being a good neighbour.

4. RISK ANALYSIS:

There is no risk analysis associated with this report.

5. FINANCIAL MATTERS:

There is no financial impact associated with this report as any educational materials can be produced in house and within budget.

6. CONSULTATIONS:

Royal Canadian Legion Branch #157
Mr. Gary Wellman

7. CONCLUSION:

During the review process, Administration consulted with the Royal Canadian Legion #157, and the initial complainant, and also reviewed the practices and Emission of Sound By-laws of other comparable municipalities. As a result of this work, Administration is recommending that instead of amending the Town's Emission of Sound By-law to include the measurement of decibel levels, that an entity or individual apply for a noise exemption for each outdoor entertainment event that has the potential to violate the by-law, that notice of such exemptions be given to the public and that By-law Enforcement conduct public education on this issue.



Bill Tetler
Manager, Licensing and Enforcement

DEPARTMENTS/OTHERS CONSULTED:

Name:

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NOTIFICATION :				
Name	Address	Email Address	Telephone	FAX
Gary Wellman				
Royal Canadian Legion Branch #157				


Report Approval Details

Document Title:	Noise By-Law Amendment.docx
Attachments:	- 2019 08 12 - Akoustik Engineering - Legion Preliminary Findings.pdf - Public-Events-Policy.pdf
Final Approval Date:	May 16, 2022

This report and all of its attachments were approved and signed as outlined below:



Tracy Prince



Peter Simmons



Valerie Critchley