

TORONTO ISLAND
COMMUNITY ASSOCIATION



To: The Toronto Licensing and Standards Committee
Re: **Proposed Changes to Toronto Noise Bylaw, Chapter 591: LS 11.2.1**
Date: May 17 2016

Dear Councillors

The Toronto Island Noise Committee (TINC), a committee of the Toronto Island Community Association, is writing to express great concern about the proposed revision to the Toronto Noise Bylaw. Despite the recent public consultation, many issues we presented have not yet been addressed. If passed, this revision will effectively leave us without protection from loud amplified sound.

We **strongly urge you not to accept the revision at this time**, but to listen to the experience of Toronto residents and help us develop a strong noise bylaw that will protect public health.

TINC has worked hard since 1995 to keep the harbour soundscape healthy. Along with other waterfront residents' groups, City Councillors, Municipal Licensing and Standards (MLS) and the Alcohol and Gaming Commission, we have a great deal of experience with harbour noise enforcement.

With over 400 outdoor daytime concerts each year on the waterfront, noise often affects our health and well-being, causing stress, anxiety, lost sleep, headache, and even arrhythmia. So having a strong noise bylaw is critical for us, and we've followed the bylaw revision closely.

Certain proposed changes to the bylaw fill us with alarm. Protections have been removed that we relied on, and replaced with a provision that is more difficult to enforce, especially on an Island.

1. **We have lost the General Prohibition** against disturbance from noise during the daytime. Since our health is affected by concerts regardless of the hour, this omission is unacceptable, and is our strongest concern about the revision.

2. **We have also lost the Loudspeaker Prohibition**, an easily enforceable "plainly audible" type of provision for amplified sound, to be used when trained bylaw officers are not available to take measurements.

3. **Our enforcement problems will worsen.** During the day, the only prohibition for amplified sound requires trained bylaw officers at point of reception to measure noise. If officers are unavailable, enforcement cannot take place.

If the proposals are implemented in their present form, we foresee an unbearable future. It is time to pause, and produce a stronger bylaw

While the following recommendations are addressed to our main concern, amplified sound, we support the well-researched submissions of the Toronto Noise Coalition on other noise sources.

To protect public health, we strongly recommend that you consider the following:

- that you retain the current **General prohibition 591-2** at all hours, so that the public is protected both day and night from all forms of noise, and can submit evidence of disturbance
- that you retain some “plainly audible” form of **Specific prohibition 591-2.1.A** regarding loudspeakers so that the public can submit evidence of disturbance
- that you remove from proposed **591-8. Exemptions** the changes to “point of reception” and allowing the awarding of multiple special event permits at one time
- that you increase staffing levels to provide the effective enforcement that is now lacking

These changes to the bylaw are helpful:

- the **reduction of decibel limits** for amplified sound from the previous levels
- the remaining changes to **591-8. Exemptions**
- the addition of **591-9. Noise mitigation plan.**
- the changes to **591-10. Offences and Penalties.**

Finally, because of the profound impact of the proposed changes on the residents of Toronto, **we strongly urge that this review not proceed to Council at this time**, and that the concerns of residents be properly addressed.

In addition, the bylaw revision should await the results of Toronto Public Health’s review of recent research on the impact of noise on health, which we understand is still in process.

The Addendum provides further details about our reasoning.

Sincerely yours

Lynn Robinson, Chair

The Toronto Island Noise Committee:

Martin Mittelstaedt, George Prodanou, Lynn Robinson, Kate Shepherd

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ADDENDUM

1. The General Prohibition 591-2

The General Prohibition 591-2 should remain in effect at all hours.

General Prohibition 591-2, which used to apply at all hours, has been eliminated for daytime hours for most noise sources, with a few exceptions such as barking dogs and HVACs.

Removing the General Provision during the daytime removes protection for the sick, the elderly, children, shift workers, those who work at home, and indeed all Toronto residents, who deserve peace in their own homes.

To protect public health, a general prohibition at all hours is mandatory.

“This (general) provision should be included in any noise ordinance.”

Noise Ordinances: Tools for Enactment, Modification and Enforcement of a Community Noise Ordinance, by Robert C. Chanaud, Ph.D.

<https://www.noisefree.org/Noise-Ordinance-Manual.pdf>

2. The Environmental Protection Act

The omission of a daytime General Provision may contravene this Act.

Prohibition, discharge of contaminant

14. (1) Subject to subsection (2) but despite any other provision of this Act or the regulations, a person shall not discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment, if the discharge causes or may cause an adverse effect. 2005, c. 12, s. 1 (5).

“contaminant” means any solid, liquid, gas, odour, heat, **sound**, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect;

“adverse effect” means one or more of,...

(c) harm or material discomfort to any person,

(d) **an adverse effect on the health of any person,**

R.S.O. 1990, CHAPTER E.19, section 14

The Environmental Protection Act is in effect during the day, as should the General Prohibition be, to cover noise sources not specifically named in the bylaw, or situations where enforcement by a bylaw officer cannot be provided.

3. A Specific Provision for Loudspeakers and other amplified sound

A Specific prohibition similar to the current 591-2.2A should be in effect at all hours.

Enforcement delayed may well be enforcement denied

Analysis of the “plainly” audible standard for Noise Ordinances, Eric M. Zwerling, Amy E. Myers, Esq., and Charles Shamoon, Esq

Since the current response time for bylaw officers is 5 days, obtaining measurements for certain disturbances from amplified sound is unlikely, including garage bands, block parties, patios, and outdoor concerts and festivals in the harbour that can vary with the weather, the staff, the promoter, the band, the DJ, and the speaker setup.

For such intermittent and unpredictable disturbances, a “plainly audible” provision is needed.

A provision prohibiting "plainly audible" noise at a specific distance from the source or its property line is an unambiguous bright line for all observers, whether from enforcement or management, against which they can determine compliance, with virtually no preparation required. There is nothing about the standard which is vague, another legal requirement to be adjudged valid.

Ibid.

Robert C. Chanaud, Ph.D. a world-renowned acoustician, in his seminal paper *Noise Ordinances: Tools for Enactment, Modification and Enforcement of a Community Noise Ordinance*, recommends three kinds of provisions, in increasing order of their evidentiary weight:

- a general provision
- subjective clauses for noise sources that cannot be easily enforced by measurement
- measurement limits for those noise sources that require them and as backup for subjective provisions

Both objective and subjective provisions in an ordinance are recommended.

He states: “Subjective provisions must be incorporated into any ordinance to provide an alternative solution to those problems that the objective provisions cannot handle. Obvious cases are complaints about voices and **music**. Noise disturbance and plainly

audible criteria are applied here.”

A subjective clause of the “plainly audible” type should be included in the bylaw, such as the following:

“No person shall emit or cause or permit the emission of sound resulting from the operation of any electronic device or a group of connected electronic devices incorporating one or more loudspeakers or other electro mechanical transducers, and intended for the production, reproduction or amplification of sound, that is plainly audible or is plainly audible at a distance of (N) feet beyond the lot line of the property from which the noise emanates and into any street or public place or residential neighbourhood.”

This builds on the previous loudspeaker provision, and

- Is inexpensive
- Allows residents to submit evidence
- Avoids the “enforcement delayed” problem
- Provides an unambiguous and clear standard for those creating amplified sound. It is not vague.
- Adds protection for residences as suggested by Councillor Mihevc in Motion 27.6
- Allows a reasonable distance to be set from source

5. Exemptions 591-8.

Retain noise measurement at 20 metres from source

The change from measurements at 20 metres from the stage to “point of reception” reduces protection for the public and will not be practicable. We recommend this change not be made.

- Noise usually decreases over distance. An event monitored at 85 dcb 20 metres from source might not be audible in a home half a mile away. Moving the point of measurement to that home and allowing 85 dcb there would result in a hearing-damaging level of noise in the home, while the levels back at source would be even more thundering.

For most sources a doubling of the distance results in a 6 dBA fall in level. www.noisenet.org

- Under special event permits, bylaw officers may be assigned to monitor sound levels near the stage. To set these levels at point of reception means either giving their cell

numbers to all nearby residents, or using 311 as a noise hotline. This is not workable

Review awarding of single permits

While allowing the awarding of multiple special event permits may save on staff time, it has been our experience that it is much more difficult to remove approvals for troubling events than to prevent them in the first place. We do not support multiples permits without public consultation and Councillor's permission.

6. Enforcement

Retain subjective provisions, and increase staff to better address current problems

While we have few problems with the current bylaw, we do have problems with the current level of enforcement against troublesome venues.

- The City does not immediately respond to complaints, and so does not provide relief during disturbances
- Charges and increasing penalties are simply not moving through the pipeline. For the 228 noise logs for about 10 noise sources that we have submitted to MLS over the last two years, we understand only two charges have been laid, and neither has gone to court. The blockage may be due to lack of staff

The following article provides data that suggests that the public is aware that MLS does not respond immediately, and is instead calling the police with noise complaints, at a ratio of about 40 to 1 in the hours close to midnight:

<http://globalnews.ca/news/373006/who-are-you-going-to-call-for-noise-complaints-mostly-the-police/>

Time	10 pm	11 pm	12 pm	1 am
Calls / hour to 311	.14	.14	.15	.14
Calls / hour to police	3.35	6.12	6.38	4.8

The conclusion from this data is that MLS is understaffed to provide protection against noise disturbances. The need for objective measurements at the time of an event can only greatly increase the City's staffing requirements and costs.

Recommendations to address current and future enforcement problems efficiently:

- Provide adequate staffing to address problems under the current noise bylaw
- Include the General Provision at all hours so the public may provide evidence
- Include a Loudspeaker Provision at all hours so the public may provide evidence
- Then trained bylaw officer officers may take measurements where possible and appropriate