ossington community association
working for the ossington strip–dundas bend neighbourhood and business districts
ossingtoncommunity.ca

April 2, 2019

Economic and Community Development Committee
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario
M5H 2N2

Dear member of Economic and Community Development Committee,

I write as President of the Ossington Community Association (OCA), under the direction of the OCA Executive Board, to comment on the proposed amendments to City of Toronto Municipal Code Chapter 591, Noise (the 'Chapter').

While some of the proposed amendments are salutary, others are a step in the wrong direction; and not all existing problems are remedied. For efficiency, this letter focuses on problems. (Though we do note our pleasure that the exemptions for 'continuous pouring of concrete' and 'large crane work' have been removed from the draft Chapter: this is very good, and we urge the Committee to keep it this way.)

The OCA recommends the following revisions to the proposed amended Chapter:

1. We observe that the general prohibition from the existing Chapter remains missing from this latest draft. The draft Chapter makes the presumption that specific enumerations will handle all cases, and that the specific recommendations offer adequate protection against disturbance. Neither of these assumptions seems safe: the 'governing imperative' of the existing Chapter recognizes this, and should be retained.
   The OCA recommends preserving as a general prohibition the language of the existing Chapter, as follows: 'No person shall make, cause or permit noise or vibration, at any time, which is likely to disturb the quiet, peace, rest, enjoyment, comfort or convenience of the inhabitants'. Moreover, we recommend that draft clause 2.9.B be struck.
2. The OCA reaffirms our earlier support for the Toronto Noise Coalition recommendation for a 'tiered' system of recommendations, with the general prohibition against unreasonable or excessive noise at the top; then a prohibition on 'plainly audible' noise at a specific distance from the source or its property line, as an 'unambiguous bright line for all observers, whether from enforcement or management, against which they can determine compliance, with virtually no preparation required'; and finally, quantitative point of reception measurements *as an additional layer of protection*—not *supplanting* or *predominating over*—the 'plain audibility' standard.
3. We observe that the draft Chapter *nowhere contains any reference to 'vibration'*. This, in our view, is a serious oversight. A vibration need not be a 'sound', because it may be subaudible: if not, it will not fall under the definition of *noise*, or therefore of *unreasonable noise*.

jessica wilson
president

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The OCA recommends explicit inclusion of vibration as a prohibited incursion. The most straightforward approach would adjust the definition of *noise* to read 'A sound *or vibration* that a person finds disturbing to their peace, rest, enjoyment, comfort or convenience.'

4. The definition of *point of reception* (PoR) is confusing. On the one hand, it defines a PoR as (our emphasis) '*any* location on the premises of a person where sound origination from other than those premises is received'. On the other, it enumerates '*the following* locations [as] points of reception', where the enumerated locations do not include '*any*' location (and also, under heading (2), excludes a certain *condition*, namely an 'indoor area' other than 'with windows and doors closed').
   The former characterization is naturally read *expansively*, but the latter is naturally read *restrictively*. This sets up an ambiguity. This ambiguity creates a loophole for emitters: they can say that while the expansive definition is violated, the restrictive definition is not.
   We assume the intent of the definition is for the expansive definition. (If not, we oppose the restrictive definition, and recommend replacing it with the expansive definition.) In that case, the second sentence should be revised to read 'The following locations are *examples of* points of reception, *but the failure to enumerate other locations does not exclude them from the definition*'.

5. Draft clause 2.1.A(1) permits a higher level of amplified musical noise starting at 7am, any day of the week. It is not clear what rationale there might be for a more permissive attitude to amplified musical noise between 7am and 9am on any day of the week; or particularly on weekends.
   The OCA recommends moving the boundary to the more permissive regime from 7am to 9am; or, for second best, from 7am to 9am on weekends.

6. Draft clause 2.5.A does not include under the enumeration of 'unnecessary motor vehicle noise' the *blasting of motorcycle tailpipes*. The subsequent draft clause 2.5.C does not address this issue, because it deals only with noise emissions at idle: the deliberate blasting when under way is also a noise source and a nuisance.
   The OCA recommends explicit inclusion of language to prohibit, as unnecessary motor vehicle noise, in clause 2.5.A, the deliberate blasting of motorcycle tailpipes while underway.

7. Draft clause 2.5.B delays the Saturday permission for vehicle repair work from the existing 7am to 9am. This is positive. But it also removes the existing prohibition on Sunday vehicle repair work. This is negative.
   The OCA recommends conserving the existing Chapter's prohibition on Sunday vehicle repair work.

8. Draft clause 2.8.A contains is problematic in two ways. First, the prohibition against 'sound level ... exceeding 50 dB(A) *or* the applicable sound level limit prescribed in provincial noise pollution control guidelines' is confusing. Is the 'or' to be understood *permissively*, as imposing only the *higher* limit; or *restrictively*, as imposing the *lower* limit? Second, it is not clear that the 'quantitative' approach to measuring noise impact is adequate: sometimes a noise source is not *objectively louder* than ambient sound, but is nevertheless *annoying*, because of its distinct pitch.
   The OCA recommends, first, clarifying that the 'or' is to be understood *restrictively* (if that is the intent; if not, we recommend that it should be understood restrictively, and that this shoulfd be clarified); and second, that the clause include a prohibition on air conditioning

noise that *either* exceeds the quantitative limit *or* is of a character disturbing to the quiet, peace, rest, enjoyment, comfort or convenience of the inhabitants.

9. Moreover, we reaffirm our recommendation to prohibit A/C mechanicals and other stationary sources above grade, whenever a reasonable at-grade location alternative is available; and that such stationary sources should in all cases be subject to mandatory noise mitigation measures.

10. Draft clause 2.9.A prohibits noise that is 'unreasonable noise *and* persistent noise', where *persistent noise* is required to go on for ten minutes or more (or to be intermittent for a longer period). But there should be protection against noise that is 'unreasonable', *full stop*: that the unreasonable noise is not 'persistent' by the standards of the definition does not seem to make it acceptable.
    Should the resident, for example, be expected to tolerate nine minutes at 3am of (for example) drum circle activity; or the setting of fire crackers, bouncing of balls, playing of a saxophone, or hammering together of furniture? It does not seem so.
    Accordingly, the OCA recommends that the draft clause be revised to 'No person shall make, cause, or permit noise, at any time, that is unreasonable noise'.

Sincerely yours,

Jessica Wilson
President