



Planning & Housing Committee  
Toronto City Hall  
100 Queen Street West  
Toronto, ON M5H 2N2  
phc@toronto.ca

November 28, 2023

Dear Members of Planning and Housing Committee,

**Re: PH8.2 - Recommended Amendments to Zoning By-laws for Bars, Restaurants and Entertainment Venues as part of the Night Economy Review - Final Report**

ABC Residents Association (“ABCRA”) is an incorporated volunteer body that has been in existence since 1957. ABCRA represents the interests of residents who live in the area between Yonge Street and Avenue Road and Bloor Street to the CPR tracks.

We appreciate the opportunity to comment on the recommended amendments to City-wide Zoning By-law 569-2013, and all Former General Zoning By-laws, as amended, as it relates to zoning regulations for bars, restaurants and other entertainment venues. We understand the need and advantages and indeed support a vibrant night economy for Toronto but not at the loss of healthy liveable communities for its residents. This important balance can be achieved as we see in Austin and Vancouver but it is not yet met in the staff recommendations before you.

We have significant concerns about the proposed expanded ancillary use of eating establishments, especially in commercial residential zones and the expanded permitting of nightclubs. Neither this report, nor the report that went to the Economic Development Committee proactively outline how the City will mitigate the increase in noise for residential areas expected with these changes.

We take issue with categorization that noise complaints from eating establishments or nightclubs that play music are only a nuisance. This minimizes and dismisses the very real concerns of many residents that participated in the consultations. In fact, the medical officer of health is on record saying that there are adverse health impacts to environmental noise, ranging from hearing loss, cardiovascular impacts, mental health, sleep disturbances, and cognitive decline.

While increasing the permitted maximum area an eating establishment can be used for entertainment to 25 percent of the interior floor area of the premises has clear benefits to the operators, without corresponding enforcement and regulation of the increased noise, these changes risk significantly impacting residents.

The Licensing, Enforcement, and Complaints Data report included with EC8.13 - Recommended Amendments to Chapter 545, Licensing for Bars, Restaurants, and Entertainment Venues indicates that the vast majority, up to 73%, of licensing complaints and charges come from eating establishments. Making them bigger and allowing them in more parts of the city adjacent to residents will not fix that.

We are aware that this report does not deal specifically with the licensing changes, however the report has to be understood in conjunction with EC8.13, and both reports should be considered together with the City's revised Noise bylaw.

During the staff presentation for EC8.13, City Staff confirmed that they anticipate this will increase the number of licenses but have no plans to change the present enforcement resources. This problem cannot be solved through the adoption of unenforceable noise control plans.

As part of the proposed changes to Chapter 545, the only mitigation strategies are noise control plans. While we support the concept of Noise Control Plans, we must note that the noise control plans are being conceived of before the Noise By-law Implementation Review is completed. How can staff or residents be confident that the noise control plans, as they are currently envisioned, will have the desired impact until we have updated the Noise implementation review. The results of the Noise Implementation Review review needs to be completed before approving any zoning changes.

To give residents confidence that these zoning changes will not have adverse impacts, rather than allow the operator to determine how and where they will monitor noise, we believe that there should be specific details prescribed in the control plans that include accepted noise levels, rules about where and how to record noise, and clear restrictions on hours of operations.

This is consistent with areas like Vancouver that include specific clear definitions and noise level rules for restaurants and entertainment types. eg.

**"Restaurant - Class 1"** means the use of premises for the primary purpose of selling and serving prepared food to the public during all hours of operation, where the premises include at least 17 indoor or outdoor seats for customers consuming food purchased on the premises, and where live entertainment, including the use of non-amplified or amplified musical instruments and disc jockey mixing turntables, but excluding patron participation such as karaoke, dancing and open microphone performing, may be available.

**"Restaurant - Class 2"** means the use of premises for the primary purpose of selling and serving prepared food to the public during all hours of operation, where the premises include at least 17 indoor

or outdoor seats for customers consuming food purchased on the premises, and where live entertainment, including the use of non-amplified or amplified musical instruments and disc jockey mixing turntables and patron participation such as karaoke, dancing and open microphone performing may be available.

Specific Noise Levels and rules about where and how to measure them is clued in the Noise Control Reports

12A. Despite anything to the contrary in this By-law, after 9 a.m. and before 1 a.m., a person in a Restaurant – Class 1 or Restaurant – Class 2 must not make, cause or permit to be made or caused continuous or non-continuous noise or sound from live entertainment that exceeds an interior rating of 90 decibels (90 dBA) Leq over a three minute time period on an approved sound meter when measured within the restaurant at a distance of two metres, and at a height of 1.2 m above the floor, from an exterior or common or party wall.

Finally, we would also like to note that this report and the zoning by-law review for bars, restaurants and entertainment venues consist of hundreds of pages. These are dense reports and we do not feel that one week is adequate time to properly review and make recommendations. These changes will have significant impacts for residents and they should have enough time to review and understand them.

Therefore, **we recommend that the committee defer this item so as to finalize the Noise by-law implementation review and review options to adequately resource and empower Bylaw Enforcement Officers (BEOs) to intervene on problematic establishments.**

We believe this is a necessary step to ensure that residents across the city can feel confident that the time and resources that went into this review will have a meaningful impact.

Sincerely,

The ABC Residents Association,  
Ian Carmichael and John Caliendo,  
Co-Chairs  
abcra@abc.ca

Attachment 1: City of Vancouver Amendments to Restaurant Class 1 and Class 2 Definitions



## CITY OF VANCOUVER

### POLICY REPORT URBAN STRUCTURE

Report Date: June 17 2005  
Author: Marco D'Agostini  
Phone No.: 604.873.7172  
RTS No.: 03701  
CC File No.: 2613-1  
Meeting Date: July 12, 2005

TO: Vancouver City Council

FROM: Director of City Plans in consultation with the Directors of Licenses and Inspection, Health Protection and Legal Services

SUBJECT: Amendments to Restaurant Class 1 and Class 2 Definitions

#### RECOMMENDATIONS

- A. *THAT the Director of City Plans be instructed to make application to amend Section 2 of the Zoning and Development By-law to revise the definition for Restaurant - Class 1 and Restaurant -Class 2, generally in accordance with, Appendix A and that the application be referred to a Public Hearing;*

*FURTHER THAT the Director of Legal Services be instructed to prepare the necessary amending by-law, generally in accordance with Appendix A, for consideration at the Public Hearing.*

- B. *THAT, subject to approval of the zoning amendment referred to in Recommendation A at the Public Hearing, the License By-law be amended to:*
- (i) revise the license categories for Restaurant -Class 1 and Restaurant - Class 2; and*
  - (ii) prohibit live entertainment in restaurants after midnight and before 9 a. m.*
- generally in accordance with Appendix B;*

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DRAFT NOISE CONTROL BY-LAW AMENDMENTS

In the Noise Control By-law add the following:

1. Section 2, Definitions

Restaurant - Class 1

means the use of premises for the primary purpose of selling and serving prepared food to the public during all hours of operation, where the premises include at least 17 indoor or outdoor seats for use by customers consuming food purchased on the premises, and where live entertainment, including the use of non-amplified or amplified musical instruments and disc jockey mixing turntables but excluding patron participation such as karaoke, dancing and open microphone performing, may be available.

Restaurant - Class 2

means the use of premises for the primary purpose of selling and serving prepared food to the public during all hours of operation, where the premises include at least 17 indoor or outdoor seats for use by customers consuming food purchased on the premises, and where live entertainment, including the use of non-amplified or amplified musical instruments and disc jockey mixing turntables and patron participation such as karaoke, dancing and open microphone performing, may be available.

2. Section 4

4B.

Council declares the noise or sound from live entertainment in a Restaurant – Class 1 or Restaurant - Class 2, made after midnight and before 9 a.m., to be a noise or sound which, in its opinion, is objectionable or liable to disturb the quiet, peace, rest, enjoyment, comfort, or convenience of individuals or the public, and prohibits such noise or sound, and the owner or operator of a Restaurant - Class 1 or Restaurant - Class 2 must not, during that period of time, make, cause, suffer, allow, or permit the making of such noise or sound.

2. Section 12

12A.

Despite anything to the contrary in this By-law, after 9 a.m. and before midnight, a person in a Restaurant - Class 1 or Restaurant - Class 2 must not make, cause, or permit to be made or caused continuous or non-continuous noise or sound from live entertainment that exceeds an interior rating of 90 decibels (90 dBA) on an approved sound meter when measured within the restaurant within two metres from an exterior or common or party wall.

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DRAFT LICENSE BY-LAW AMENDMENTS

1. In Section 2, Definitions, replace the definitions for Restaurant - Class 1 and Restaurant - Class 2 with the following:

Restaurant - Class 1

means the use of premises for the primary purpose of selling and serving prepared food to the public during all hours of operation, where the premises include at least 17 indoor or outdoor seats for use by customers consuming food purchased on the premises, and where live entertainment, including the use of non-amplified or amplified musical instruments and disc jockey mixing turntables but excluding patron participation such as karaoke, dancing and open microphone performing, may be available.

Restaurant - Class 2

means the use of premises for the primary purpose of selling and serving prepared food to the public during all hours of operation, where the premises include at least 17 indoor or outdoor seats for use by customers consuming food purchased on the premises, and where live entertainment, including the use of non-amplified or amplified musical instruments and disc jockey mixing turntables and patron participation such as karaoke, dancing and open microphone performing, may be available.

2. In Section 24, add the following:

24.3D

Council prohibits live entertainment in a Restaurant –Class 1 or Restaurant -Class 2 after midnight and before 9 a.m.

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DRAFT ZONING AND DEVELOPMENT BY-LAW AMENDMENTS

A by-law will be prepared generally in accordance with the provisions listed below, subject to change and refinement prior to posting.

In Section 2, Definitions, replace the definitions for Restaurant - Class 1, Restaurant - Class 2 with the following:

Restaurant - Class 1

means the use of premises for the primary purpose of selling and serving prepared food to the public during all hours of operation, where the premises include at least 17 indoor or outdoor seats for use by customers consuming food purchased on the premises, and where live entertainment, including the use of non-amplified or amplified musical instruments and disc jockey mixing turntables but excluding patron participation such as karaoke, dancing and open microphone performing, may be available.

Restaurant - Class 2

means the use of premises for the primary purpose of selling and serving prepared food to the public during all hours of operation, where the premises include at least 17 indoor or outdoor seats for use by customers consuming food purchased on the premises, and where live entertainment, including the use of non-amplified or amplified musical instruments and disc jockey mixing turntables and patron participation such as karaoke, dancing and open microphone performing, may be available.

In addition, staff propose a review of zoning district schedules that currently do not permit the use to determine where the use might be appropriate (this could include C-2B and C-2C zones covering parts of Commercial Drive and West 4<sup>th</sup> Avenue) and thus provide increased opportunities for this use to be considered (on a conditional basis). Recommendation E directs staff to complete this assessment and report back to Council after consulting with the public and industry representatives.

#### Impact Reduction Measures for Restaurants

Licensing staff are presently working on a strategy to implement impact reduction measures with respect to liquor primary establishments which is expected to be reported to Council shortly. Once that has been completed staff will turn their attention to reviewing food primary liquor licensed establishments, which will include impact reduction measures for restaurants that offer entertainment. The results of this work may allow additional entertainment opportunities provided adequate mitigation measures are in place.

#### FINANCIAL AND PERSONNEL IMPLICATIONS

Approval of the proposed amendments will not result in any financial implications at this time. However, an increase in complaints requiring more enforcement could result if opportunities for entertainment are expanded which will add to the workload of Licenses and Inspections and Environmental Health staff. It is expected that this can be addressed with existing resources, noting that the result will be longer timelines in dealing with all enforcement issues. Staff will monitor the performance of the revised standards including the number of complaints and time required to deal with them and report back to Council should modification to the regulations, such as revised license definitions, or license fees be required and/or a resource issue arise. Additional staff resources may be required, particularly if more restaurants begin to offer entertainment as a result of the change in definitions.

#### COMMUNICATIONS PLAN

Should Council refer the proposed Zoning and Development By-law amendments to Public Hearing, staff will meet with restaurant and entertainment industry representatives to explain the proposed amendments prior to the Public Hearing. An information session for public input will also be held.

#### CONCLUSION

Based on a review of existing regulations staff recommend amendments to the Zoning and Development and License By-laws to provide additional opportunities for entertainment in restaurants. To address potential neighbourhood impacts, amendments to the Noise Control By-law and further review of impact reduction measures are also recommended.

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be referred to the business license enforcement process during which conditions could be added to the business license either through Council or negotiation with the licensee.

There may also be concerns from pub and cabaret owners regarding the objective of fair and equitable treatment. Neighbourhood pubs and cabarets are only permitted on a conditional basis in the city. Some may feel that the expanded entertainment opportunities in restaurants will impact their operations, particularly where Restaurant –Class 1 can be approved on an outright basis without public consultation and noise mitigation measures which are required for pubs and cabarets. Restaurants would be differentiated from these other uses by the requirement for food service and the noise control by-law measures. In addition, the provincial liquor branch would issue a food primary license for restaurants whereas a liquor primary license would be granted to pubs and cabarets. However, in practical terms these uses will be more closely aligned as described in the comments of the Chief License Inspector below. This may result in fewer pub applications in the future and existing smaller liquor licensed establishments could potentially be impacted.

#### Comments of the Chief License Inspector

Licenses & Inspections and other enforcement staff have concerns regarding the potential for complaints and enforcement due to negative impacts from expansion of entertainment in restaurants on surrounding area residents and businesses.

To date, relatively few complaints are received regarding entertainment noise from restaurants under the present Zoning and Development and License By-law regulations. However, it is not possible to draw a conclusion based on the causal relationship between the lack of complaints and the current regulations. That is, is restaurant entertainment a non-issue that results in few neighbourhood complaints even when the entertainment provided is beyond the approved use; or, do the current limitations in the regulations result in operators self-policing to ensure that their entertainment does not impact the adjacent residents.

A change to increase the type of entertainment permitted in restaurants will result in the restaurant land uses becoming very similar to the land uses for neighbourhood pubs, cabarets and hotel bars. This shift when combined with the provincial changes to liquor service in restaurants will likely result in an increase in bar-like complaints (such as patron nuisance behaviour) associated with restaurants providing additional entertainment. These issues exist, to varying degrees, with any establishment permitted to serve alcohol and at present, staff are only able to mitigate not eliminate these problems.

Based on the above, staff predicts that obtaining compliance (i.e. few or no area resident complaints) from restaurants operating beyond the proposed regulations will be difficult and may take some time to resolve. Furthermore, if these restaurants cannot be brought into compliance within a reasonable period of time, there will be substantial pressure on other restaurants to operate in a similar fashion.

#### Streamlining Restaurant –Class 2 Applications

To simplify the application process for Restaurant - Class 2, Council can eliminate the need for time-limited development permits for Restaurant - Class 2 applications (Recommendation D). Existing guidelines take into account separation of uses and require noise mitigation which should adequately address potential impacts and the conditional nature of approval requires public consultation.

In addition, it is recommended that live entertainment in restaurants not be permitted between 12 am (midnight) and 9 a.m. Approximately one-third of restaurants surveyed indicated that entertainment carried on past midnight, so there is likely to be concern expressed by these operators. At the same time residents are likely to be concerned with how late entertainment will be occurring. Staff is of the opinion that on balance the midnight time limitation is a fair trade-off. Pursuant to section 46(3) of the Liquor Control Licensing regulations, local governments may restrict or prohibit the type of entertainment allowed in a licensed establishment. Recommendation B would direct staff to amend the License By-law.

#### Noise By-law Changes

To address potential neighbourhood impacts and ensure livability for residents it will be important to adopt measures to deal with problems when they arise. Staff recommend changes to the Noise Control By-law, adding a new provision to limit interior noise levels to a maximum 90 decibels in a restaurant with entertainment as well as the approval of a stopping time for entertainment in restaurants. Council has authority under section 323(b) of the Vancouver Charter to make by-laws for regulating noises or sounds which in the opinion of the Council, are objectionable or liable to disturb the quiet, peace, rest, enjoyment, comfort, or convenience of individuals or the public.

The Director of Health Protection is of the opinion that high interior noise levels are not only a nuisance to neighbours and the community, but a very real health hazard to patrons and employees within the establishment. The 90 decibel limit was selected based on current occupational noise exposure limits as well as the existing criterion in the Noise Control By-law which requires posting of warning signs (for the public) when noise exceeds 90 decibels. Occupational exposure research has resulted in occupational noise criteria of approximately 91 decibels over a 2 hour period.

A Noise By-law amendment prohibiting live entertainment between midnight and 9 a.m. is also recommended to ensure that neighbours can expect to have a period of quiet and rest. Approval of Recommendation C would result in bringing forward of amendments described in Appendix C.

#### Meeting the Restaurant Entertainment Objectives

When measured against the restaurant entertainment review objectives, the proposed changes meet the first two objectives of supporting arts and cultural and fun city activities by permitting a wider range of entertainment opportunities. Allowing more entertainers and amplified musical instruments is generally consistent with the majority of entertainment that occurs based on the restaurant survey.

However, the trade-off could be the potential effect on the livability/ neighbourhood impact objective. It is anticipated that the amount of entertainment and the number of restaurants offering entertainment will increase. Allowing amplified musical instruments could result in more neighbourhood impacts, especially noise complaints particularly in zones where Restaurant - Class 1 can be approved on an outright basis. This will be true for C-1 (small scale neighbourhood commercial) zones and to some extent in other outright zones (C-2, C-3A, C-5, C-6, MC-1, MC-2, HA-1, HA-2 and HA-3) where there is likely to be a mix of residential and commercial uses. Additional Noise By-law provisions dealing with entertainment noise and hours of entertainment are proposed to meet the objective of mitigating livability and neighbourhood impacts. When enforcement is necessary, matters will

Table 1. Summary of Proposed Changes

	Existing	Proposed Changes
Restaurant - Class 1  (outright approval in some zones; conditional in some others)	<ul style="list-style-type: none"> <li>no more than 2 live entertainers</li> <li>no dancing</li> <li>no amplified musical instruments</li> <li>no maximum interior noise level</li> <li>no stopping time for entertainment</li> </ul>	<ul style="list-style-type: none"> <li>no limit on number of live entertainers</li> <li>no dancing</li> <li>amplified musical instruments permitted</li> <li>establish decibel limit (90 dBA) for interior noise in restaurants</li> <li>not permit live entertainment in restaurants between midnight and 9 a.m.</li> </ul>
Restaurant - Class 2  (conditional approval only)	<ul style="list-style-type: none"> <li>3 or more live entertainers</li> <li>dancing permitted</li> <li>amplified musical instruments permitted</li> <li>no maximum interior noise level</li> <li>no stopping time for entertainment</li> </ul>	<ul style="list-style-type: none"> <li>no limit on number of live entertainers</li> <li>dancing permitted</li> <li>amplified musical instruments permitted</li> <li>establish decibel limit (90 dBA) for interior noise in restaurants</li> <li>not permit live entertainment in restaurants between midnight and 9 a.m.</li> </ul>

Zoning and Development By-law Changes

The proposed revisions would not limit the number of entertainers and would permit amplified musical instruments in restaurants. Revised definitions for restaurants permitting amplified and non-amplified musical instruments as well as DJ mixing turntables as part of live entertainment are also proposed. The recommendations include further refinements to the definitions, to ensure the preparation, serving and consumption of food as the primary function in restaurants. These are fully described in Appendix A.

Dancing would only be permitted in Restaurant –Class 2 (conditional approval only) as is the case now. This is due to Provincial Liquor Control and License Branch regulations which require a resolution from a local government when a food-primary (i.e. restaurant) licensee applies for “patron participation entertainment” (such as dine and dance or karaoke). The local government is expected to consider the potential for noise, impact on the community and whether the restaurant may be acting improperly as a liquor-primary establishment. Council could choose to opt out of this process but the Liquor Branch would still require an applicant to satisfy these regulatory requirements. This would be more costly and time consuming for applicants than the current development permit application process.

License By-law Changes

Revisions to the License By-law definitions for Restaurants are also proposed to be consistent with the Zoning and Development By-law (See Appendix B). Business license fees would be the same for all restaurant classes.

#### Resident Survey

A telephone survey of residents living near a Restaurant - Class 1 offering entertainment was also commissioned. Thirty-seven residents living adjacent to or near 14 different restaurants that offer entertainment were contacted. Approximately two-thirds of survey participants had no problems. When asked about the level of entertainment noise, 87% felt it was acceptable or didn't notice. Only eleven percent of respondents indicated noise from entertainment as a problem, while 24% identified patron behaviour, parking and garbage as issues. The latter have more to do with management and operations aspects of restaurants and are not directly associated with entertainment noise. Of those indicating entertainment noise was too loud, weekends and late hours (after 10 pm) were mentioned most often as times when it occurred.

#### Other Cities

Staff also contacted other municipalities in the Lower Mainland, some major cities in Canada and a select number of larger American cities to determine how they regulate entertainment in restaurants. The findings indicated that Vancouver's approach is unique in the following areas: differentiating restaurant uses based on the level of entertainment offered; and allowing entertainment in restaurants (Restaurant - Class 1) as an outright use in some zones. Other cities typically allow entertainment in restaurants as an accessory use on a conditional basis. This provides the ability to require mitigation measures to address any potential negative impacts. Approvals take into consideration aspects such as the size of the proposed restaurant, proximity to residential uses, provision of parking, and may include conditions specific to the establishment such as hours of operation. Some of these other jurisdictions also require a separate business license for restaurant and for entertainment. Enforcement in these other locations is based on meeting land use, license and noise by-law standards.

#### Existing Restaurant Entertainment Controls

Enforcement staff in Inspections, Licensing and Environmental Health was consulted extensively to understand existing regulations and assess the potential impacts of any proposed revisions. Through these discussions it became evident that existing Restaurant - Class 1 regulations are effective at ensuring entertainment does not become the principal purpose for operating a restaurant and that the entertainment is a complementary feature or attraction to the main function of preparing and serving food. This differentiates restaurants from other uses such as cabaret which focus on dancing and entertainment. However, these regulations do limit the types of entertainment in the restaurant environment.

Current Noise Control By-law regulations pertaining to entertainment require noise readings to be taken at the location being impacted (i.e. the place where the offensive noise is being heard). This requirement has proven to be difficult to achieve as readings can be affected by ambient noise and obtaining accurate measurements can take some time. When enforcement is necessary, compliance can be achieved through a Business License Review Hearing. However, it can take several months before a business license can be suspended or referred to City Council for revocation during which time neighbours will continue to be annoyed or kept awake.

#### New Restaurant Definitions

Based on all of the above inputs, staff propose revisions to the Zoning and Development and License By-laws for restaurants that would allow additional entertainment and amendments to the Noise Control By-law to ensure a reasonable level of quiet, as outlined in Table 1.

clubs). Even with good modern construction the bass beat is difficult to contain within the structure due to the low frequency/ long wavelength of bass tones.

The current regulations on restaurant entertainment, adopted by City Council at Public Hearing on September 15, 1988, were developed in response to a number of restaurants that were operating more like cabarets. At that time new definitions were approved which require a minimum number of seats and the preparation and consumption of food as the principal activity. Limits on the number of entertainers and whether amplified musical instruments and dancing are permitted were also adopted to ensure the entertainment was an accessory feature to the main restaurant operation. Cabaret use allows for dancing and entertainment. These regulations have proven to be an effective tool in ensuring that entertainment is low-key and is a subsidiary component in the restaurant operation.

Provincial liquor regulations require public consultation and a resolution from Council for approval of dancing by patrons in restaurants.

#### DISCUSSION

In completing the restaurant entertainment review the following objectives, based on Council policies and directions, were developed to guide the work:

- support arts and cultural activities by increasing entertainment opportunities
- provide opportunities for “fun city” activities
- mitigate livability/ neighbourhood impacts – expectation of quiet enjoyment for neighbours especially for adjacent residential users
- promote fair and equitable treatment between businesses.

A number of research tasks were completed to determine an appropriate response. Correspondence files were reviewed and discussions held with property use, liquor licensing and environmental health staff to ascertain the level of complaints for Restaurant - Class 1 providing entertainment and to determine any enforcement issues. A survey of establishments with Restaurant - Class 1 licenses was also commissioned to determine the scope of entertainment being offered. An additional survey of residents living near restaurants with entertainment was also completed. Finally, a number of other municipalities were contacted. The key findings for each of these are described below.

#### Restaurant - Class 1 Survey

There are more than 1500 business licenses issued for restaurants in the City. Of these, 52 Class 1 Restaurants advertise live entertainment in local papers or telephone directories (approximately 3%). A survey firm was retained and conducted ‘in person’ interviews with 35 (of the 52) owners/ managers of establishments, 28 of which provide live entertainment. Some key findings related to entertainment indicate that approximately 80% of restaurants feature 2 or less performers (66% of the time) and 69% feature 3-4 performers (34% of the time) [Note: total is more than 100% as some restaurants offer entertainment with less than 2 and more than 2 entertainers]. In addition, amplified or electric instruments are used about 67% of the time.

Restaurant - Class 1

- no limit on number of live entertainers
- no dancing
- amplified musical instruments permitted
- establish decibel limit (90 dBA) for interior noise in restaurants
- not permit live entertainment in restaurants between the hours of 12 am (midnight) and 9 am.

Restaurant - Class 2

- no limit on number of live entertainers
- dancing permitted
- amplified musical instruments permitted
- establish decibel limit (90 dBA) for interior noise in restaurants
- not permit live entertainment in restaurants between the hours of 12 am (midnight) and 9 am.

Finally, a change to simplify approvals for Restaurant –Class 2 and a review of possible zoning districts where this use could be permitted are also recommended.

BACKGROUND

Restaurants provide alternate venues and opportunities for musicians and performers in the city. Relatively few complaints are received about entertainment noise from restaurants and the most common complaints are associated with traffic, parking, and patron behaviour. Noise issues are often exacerbated during times of better weather when doors and windows are opened and outdoor patios are operating. **Complaints around noise issues have generally been increasing over time as the city builds out and densifies and are more common in mixed use areas with residential or commercial areas adjacent to residential. Issues often arise when restaurants operate beyond their approved liquor license and/ or land use.**

Enforcement is undertaken on a complaint basis and handled by Inspections and Environmental Health staff. Problems are usually resolved in a timely manner when operators are informed of their transgressions of the current by-law provisions. **However, when establishments continue to operate beyond their approved limits, it can take several months to gather evidence and prosecute during which time the neighbourhood continues to be affected. In practice, enforcement related to entertainment is difficult. It involves municipal (land use, business license and noise) by-laws and provincial (liquor) regulations. Changes to provincial liquor regulations in 2002 that relaxed liquor service/ consumption in restaurants have added to the complexity of enforcement. Furthermore, staff often deal with complaints where the noise does not exceed approved by-laws (and therefore enforcement is not possible) but neighbours continue to be bothered.**

**Entertainment noise can be a problem for neighbouring residents. A major contributor to this problem is that many existing entertainment facilities are “leaky” in terms of allowing high sound levels from amplified music to impact the neighbouring community. This is especially true of restaurants, where unlike night clubs, the buildings were not originally designed to keep entertainment noise within the four walls. This is further compounded by the fact that music is increasingly being played at high and unhealthy levels (often exceeding 100 decibels within**

The License By-law contains the same definitions as the Zoning and Development By-law for Restaurant –Class 1 and Restaurant –Class 2 and an additional definition for Restaurant – Class 1 with Lounge (an area designated for the sale of alcoholic drinks to customers with or without food). Lounges are currently prohibited in the Zoning and Development By-law.

Restaurant operators are also subject to the Noise Control By-law which establishes acceptable levels of noise that various activities, including entertainment, may produce in three categories: activity zone (i.e. industrial areas and downtown), intermediate zone (i.e. mixed use commercial and heritage areas) and quiet zone any area not part of an activity or intermediate zone). Most restaurants are located in either the intermediate or activity zone. Noise control provisions for bass sounds and music sounds in commercial premises are also included in the By-law.

On May 27, 1997 City Council received the Urban Noise Task Force report on City Noise and adopted various recommendations to deal with excessive noise from cabarets and similar commercial establishments including:

- setting maximum noise levels within entertainment facilities which would result in acceptable noise levels in the community;
- increasing minimum fines against offending entertainment facilities;
- instituting stricter noise insulation requirements for cabarets;
- ensuring adjacent new residential development incorporates adequate sound isolation;
- evaluating other ways of monitoring bass noise;
- calling for consistent noise level warning signs to be used.

Provincial liquor regulations require comments from Council on applications that include patron participation such as dancing or karaoke.

#### PURPOSE AND SUMMARY

This report responds to a request from City Council to review and report back on by-laws regulating entertainment for Restaurant –Class 1. When making the request Council indicated the work should look at the feasibility of expanding opportunities for restaurants that provide entertainment. In response, staff completed surveys, researched approaches used by other municipalities and examined existing regulations and experience with their enforcement.

The report's recommendations would allow for more entertainment in restaurants by removing limits on the number of entertainers and permitting amplified musical instruments in a Restaurant - Class 1. Dancing would only be permitted in Restaurant - Class 2 as provincial regulations require public consultation in any case. To address potential neighbourhood impacts, amendments to the Noise Control By-law establishing a maximum interior decibel level (90 dBA) and instituting a period (midnight to 9 a.m.) when live entertainment in restaurants is not permitted are also recommended. The recommended changes are summarized as follows:

AND THAT the Director of Legal Services, be instructed to bring forward the necessary amending by-law, generally in accordance with Appendix B, for consideration at the time of enactment of the zoning by-law.

C. THAT subject to approval of the zoning amendment referred to in Recommendation A at the Public Hearing, the Noise Control By-law be amended to:

(i) add definitions for Restaurant –Class 1 and Restaurant –Class 2;

(ii) establish a maximum interior sound level of 90 decibels (dBA) for restaurants providing live entertainment; and

(iii) prohibit live entertainment in restaurants after midnight and before 9 a.m.

generally in accordance with Appendix C of this report;

FURTHER THAT the Director of Legal Services, be instructed to bring forward the necessary amending by-law, generally in accordance with Appendix C, for consideration at the time of enactment of the zoning by-law.

D. THAT Council advises the Director of Current Planning to no longer require development permit approvals for Restaurant - Class 2 be on a time-limited basis.

E. THAT Council instructs the Director of City Plans to report back on the feasibility of expanding Restaurant –Class 2 to other zoning district schedules.

#### GENERAL MANAGER'S COMMENTS

The General Manager of Community Services RECOMMENDS approval of A, B, C, D and E noting that these recommendations reflect staff's efforts to achieve a workable balance between two important goals: increased opportunity for live entertainment and neighbourliness.

#### COUNCIL POLICY

Council policy on entertainment in restaurants is reflected in Section 2 of the Zoning and Development By-law. Restaurant - Class 1 and Class 2 have at least 17 seats and customers consume food prepared in the establishment. Live entertainment in Restaurant - Class 1 is limited to 2 persons and no dancing or amplified musical instruments are permitted. Any more entertainment requires approval as a Restaurant - Class 2 which is only permitted on a conditional basis. A Restaurant - Class 2 is generally required to provide acoustical upgrading and air conditioning. Guidelines also recommend a Restaurant - Class 2 be separated by a lane or street from residential districts and uses, schools, churches, community centres or other institutional buildings with evening activities. Development permit approvals for Restaurant - Class 2 are issued on a time-limited basis.