

DENTONS CANADA LLP

DATE: February 10, 2023

PAYEE: City of Toronto

VENDOR #: F009739

CHEQUE #

1005966

VOUCHER	INVOICE	FILE #	DESCRIPTION	AMOUNT
1558917	C245001	571462-000016		200.00
TOTAL				\$200.00

THE FACE OF THIS DOCUMENT HAS A COLOURED BACKGROUND. THE BACK OF THIS DOCUMENT CONTAINS A WATERMARK.

DENTONS CANADA LLP

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1005966

10-02-2023

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TWO HUNDRED AND 00/100 Dollars

\$ 200.00

TO THE ORDER OF

City of Toronto

General Account Canadian Funds

PER



PER

⑈ 1005966 ⑈ ⑆00022001⑆ 1664.1148⑈

February 13, 2023

File No.: 571462-6

**DELIVERED VIA COURIER**

City Clerk  
City Clerk's Office  
City of Toronto, City Hall  
2<sup>nd</sup> Floor, 100 Queen Street West  
Toronto, Ontario  
M5H 2N2

Dear Sir/Madame:

**Re: Noise Exemption Permit – Application No. C245001 – Notice of Appeal  
1 Bloor Street West, Toronto, ON M4W 1A3**

We are the solicitors for Mizrahi Development Group (The One) Inc. (“Mizrahi”). Please accept this as Mizrahi’s notice of appeal from the decision of the City dated January 23, 2023 to deny a noise exemption permit for Construction Activity (Appendix 2) for the site at 1 Bloor Street West, Toronto, Ontario, M4W 1A3 (the “Site”).

**1. Background**

Mizrahi filed its application for the within exemption permit on December 15, 2022. The City initially advised Mizrahi that Councillor Saxe would not entertain a 5am start time, or Sundays and statutory holidays, but that she would be willing to possibly allow a later end time if the area BIA’s are included in the conversation.<sup>1</sup> However, before Mizrahi could engage in these discussions, the City issued the denial letter advising that the City Councillor had provided an objection to the application being approved.<sup>2</sup>

**2. The Exemption Permit Ought to be Issued**

For the reasons set out below, Council, or the community council under delegated authority, is requested to allow the appeal and issue the requested noise exemption permit in accordance with Toronto Municipal Code, Chapter 591, § 591-3.2

<sup>1</sup> A copy of the City’s communication in this regard is attached at Tab 1.

<sup>2</sup> A copy of the denial letter is attached at Tab 2.

**a. Mizrahi Ready To Consult with Local Community**

Mizrahi has always been ready, willing, and able to consult with Councillor Saxe, the local community and the BIA's with respect to the exemption permit that is sought.

Mizrahi held regular community meetings up until April 23, 2022 but stopped when nobody else attended. It intends to resume meetings, and has scheduled a meeting on February 24, 2023 with the relevant parties and will take the comments shared seriously as a community partner.

**b. Mizrahi Willing to Vary the Requested Terms of the Exemption Permit**

Mizrahi is willing to make reasonable amendments to the terms requested in the within exemption permit if those are required in the interest of the wider community.

Mizrahi takes Councillor Saxe's concerns seriously and is hereby requesting that the 5am start time included in the exemption application be changed to 6am. Mizrahi will also abide by similar terms applicable to similarly situated companies. One such term we understand others have agreed to is a 6am quiet start to allow workers and materials to be transported up the tower with a 6:30 construction start.

**c. Mizrahi's Construction Activity Not Disruptive Given Environment**

As set out in the opinion prepared by Mark Levkoe of Valcoustics,<sup>3</sup> the background sound ambient at the Site is roughly double that of a typical residential area, and the topography of the area makes it so that sound confusion is common. There are also multiple other construction sites. This environment makes it so that Mizrahi's contemplated construction activity is unlikely to be especially disruptive to the area residents.

**d. Exemption is Consistent with Past Rules**

The requested exemption is in line with the past construction noise rules that Mizrahi has abided by.

Between April 7, 2020 to October 7, 2021, Mizrahi operated consistent with O. Reg 131/20, which limited Section 451.1 of the *Municipal Act* temporarily prohibiting municipalities' ability to regulate construction noise relating to certain projects. The Province allowed construction activity between the hours of 6am and 10pm, and Mizrahi's construction proceeded accordingly.

Prior to the within application, Mizrahi had been operating under a noise exemption permit for Construction Activity (Appendix 2) in effect until December 1, 2022. This permit allowed Mizrahi to conduct construction activity from 5am until 11pm.<sup>4</sup> Mizrahi abided by this permit.

**e. Mizrahi in Compliance**

In addition to its compliance with the sound level rules applicable to it, Mizrahi is otherwise in compliance with the Toronto Noise Bylaw.

Mizrahi has no *Provincial Offences Act* convictions, and no enforcement is pending. Mizrahi has abided by City rules.

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<sup>3</sup> A copy of this opinion is attached at Tab 3.

<sup>4</sup> A copy of this expired exemption permit providing for operation from 5:00AM is attached at Tab 4.

**f. Balance of Convenience Favours Granting of Permit**

If this appeal is not granted, Mizrahi will be seriously prejudiced. This will impact the timing of construction and consequently the impact of construction on the surrounding area. Mizrahi's construction schedule will be irreparably jeopardized leading to an increase of what could be years more of construction at the site. This will negatively impact the community writ large, delaying the availability of residential units, and subjecting it to a longer period of construction.

Further, as explained by Mr. Levkoe in his opinion, as construction moves higher, the impact of the noise on the residents will lessen. The sooner the construction surpasses the height of existing residential units, the sooner this will happen.<sup>5</sup> There is therefore a wider interest in issuing the exemption permit.

Because of the delay the lack of a noise exemption permit has on the construction schedule, we would ask that this matter be placed before the Toronto and East York Community Council at the earliest possible date.

Yours truly,  
Dentons Canada LLP



Dina Awad  
Partner

DA  
Enclosures

cc: Mary Ellen Bench, Dentons Canada LLP  
Client

---

<sup>5</sup> Mr. Levkoe's opinion on this topic is attached at Tab 3.

TAB ONE

**From:** NoiseTO <[NoiseTO@toronto.ca](mailto:NoiseTO@toronto.ca)>  
**Sent:** Wednesday, January 4, 2023 8:55 AM  
**To:** Vergis-Mayo, Katryna <[katy.vergismayo@dentons.com](mailto:katy.vergismayo@dentons.com)>  
**Cc:** Bench, Mary Ellen <[maryellen.bench@dentons.com](mailto:maryellen.bench@dentons.com)>; Awad, Dina <[dina.awad@dentons.com](mailto:dina.awad@dentons.com)>; Leo Butko <[Leo.Butko@toronto.ca](mailto:Leo.Butko@toronto.ca)>  
**Subject:** RE: Noise Exemption Permit Application Package - Appendix 2 - 1 Bloor Street West (571462-6)

**[WARNING: EXTERNAL SENDER]**

Good morning Katryna,

The councillor responded to the construction noise exemption request and has some concerns relating to the start time and days of operation.

Councillor Saxe is not willing to entertain a 5am start time, the request also included Sundays and statutory holidays which the councillor finds extremely disruptive.

The councillor is willing to possibly allow a later end time but only if the area's BIA is included in the conversation.

Please find below Councillor Saxe's contact information for follow-up below.

Email:[Councillor\\_Saxe@toronto.ca](mailto:Councillor_Saxe@toronto.ca)

Phone:416-392-4009

Thank you,

Jodian Reid  
Support Assistant C  
Dedicated Noise Team  
Municipal Licensing & Standards, Bylaw Enforcement

---

**From:** Vergis-Mayo, Katryna [<mailto:katy.vergismayo@dentons.com>]  
**Sent:** December 15, 2022 11:20 PM  
**To:** NoiseTO <[NoiseTO@toronto.ca](mailto:NoiseTO@toronto.ca)>  
**Cc:** Bench, Mary Ellen <[maryellen.bench@dentons.com](mailto:maryellen.bench@dentons.com)>; Awad, Dina <[dina.awad@dentons.com](mailto:dina.awad@dentons.com)>  
**Subject:** Noise Exemption Permit Application Package - Appendix 2 - 1 Bloor Street West (571462-6)

Good evening,

Please find attached a complete noise exemption permit application form (Appendix 2) and covering letter for the construction site at 1 Bloor Street West, as well as the required noise mitigation plan and supporting documentation, and the associated street occupation permits, submitted on behalf of our client, Mizrahi Development Group (The One) Inc.

Please provide the invoice for payment for this application, as soon as possible.

Kindly confirm receipt of this email.

Thank you,



**Katryna Vergis-Mayo**

Associate

My pronouns are: She/Her/Hers

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[katy.vergismayo@dentons.com](mailto:katy.vergismayo@dentons.com)

[Bio](#) | [Website](#)

Dentons Canada LLP

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Canada

LuatViet > Fernanda Lopes & Associados > Guevara & Gutierrez > Paz Horowitz Abogados > Sirote > Adepetun Caxton-Martins Agbor & Segun > Davis Brown > East African Law Chambers > Eric Silwamba, Jalasi and Linyama > Durham Jones & Pinegar > LEAD Advogados > For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

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TAB TWO





**Anna Fernandes**  
Director, Bylaw Enforcement

**Municipal Licensing and Standards**  
Carleton Grant, Executive Director

**Municipal Licensing and Standards  
Bylaw Enforcement**  
1530 Markham Road, 3<sup>rd</sup> Floor  
Toronto, ON M1B 3G4

**Terry Van Elswyk**  
Manager  
Dedicated Noise Team  
Tel: 416-338-3211  
[Terry.VanElswyk@toronto.ca](mailto:Terry.VanElswyk@toronto.ca)  
[www.toronto.ca/mls](http://www.toronto.ca/mls)

January 23, 2023

**VIA EMAIL & REGISTERED MAIL**

Jonny Cracower  
Mizrahi Development Group (The One) Inc.  
127 Hazelton Ave  
Toronto, ON M5R 2E4

**Re: Noise Exemption Permit – Application No. C245001  
1 Bloor Street West Toronto, ON M4W 1A3**

Dear Jonny Cracower:

Please be advised that your application for a noise exemption permit has been denied for the following reason:

1. Pursuant to Toronto Municipal Code, Chapter 591, Noise, Section 3.2 – Exemption Permits, the City Councillor where the activity is to take place has provided an objection to the application being approved.

As a result, Municipal Licensing and Standards is not able to approve this noise exemption permit application.

Please be advised that you may appeal this decision to the community council which has jurisdiction for the location of the proposed activity by filing an appeal within 21 days of the date of this notice with the City Clerk at City Clerk's Office, City of Toronto, City Hall, 2<sup>nd</sup> Floor, 100 Queen Street West, Toronto, Ontario, M5H 2N2. There is a fee for filing this appeal as well as a charge for notification to all residents within 100 metres of the location of the proposed activity.

For more information on this application denial or the appeal process, please contact the Bylaw Enforcement, Noise Team at [NoiseTO@toronto.ca](mailto:NoiseTO@toronto.ca) or by telephone at 416-392-4380.

Sincerely,

Terry Van Elswyk, Manager  
Dedicated Noise Team

Copy: City Clerk

TAB THREE



*Sound solutions to acoustical challenges*  
Celebrating over 60 years

30 Wertheim Court, Unit 25  
Richmond Hill, Ontario, Canada, L4B 1B9

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web • www.valcoustics.com

telephone • 905 764 5223

fax • 905 764 6813

February 13, 2023

Dentons Canada LLP  
77 King Street West, Suite 400 Toronto-Dominion Centre  
Toronto, ON  
M5K 0A1

Attention: Dina Awad  
[dina.awad@dentons.com](mailto:dina.awad@dentons.com)

**VIA E-MAIL**

**Re: Opinion on Acoustic Environment and Noise Exemption Permit  
One Bloor Street West/By-law Defense  
One Bloor Street West  
Toronto, Ontario  
VCL File: 122-0445**

## 1.0 INTRODUCTION

Mizrahi Development Group (The One) Inc. (Mizrahi) has submitted an application for a Noise Exemption Permit under Chapter 591 Noise of the Toronto Municipal Code (the "Noise By-law") for the site located at 1 Bloor Street West. The purpose of the exemption is to permit construction activities outside of the regulated hours indicated in the Noise By-law.

The conditions to apply for an Exemption Permit are detailed under Subsection 3.2 of the Noise By-law. The only condition with a numerical sound level requirement is under Subsection D. (4), which states:

*The sound emitted from any equipment shall not exceed a sound level (expressed in terms of  $L_{eq}$  for a ten-minute period) of 85 dBA when measured 20 metres from the source.*

As requested, Valcoustics Canada Ltd. (VCL) was retained to provide expert opinion related to the acoustic environment in the vicinity of the site and how this may impact Mizrahi's application for a Noise Exemption Permit under the Noise By-law.

## 2.0 THE ACOUSTIC ENVIRONMENT

The acoustical environment can influence the perceived sound levels in two significant ways:

1. Higher background ambient sounds can limit what would otherwise be termed "clearly audible" (as used in the Noise By-law). This occurs when some of the more distinguishing features of a sound blend into the background sound and become less noticeable due to what is termed "masking". A sound that would be clearly audible in a low background sound environment may not be clearly audible when the background sound is high because of the interference and masking of otherwise observable information content.

2. A highly developed area, with several buildings and other hard surfaces (sidewalks, roads) can also impact the situation. These features reflect sound and promote efficient propagation. Efficient propagation results in sound being audible at greater distances from the source and from different directions. With sound decaying less rapidly and a multitude of reflections, identifying the location of a source becomes more difficult. This is a common phenomenon downtown. For example, one may perceive an ambulance or fire truck siren but not be able to tell from which direction it is coming or in fact, believe it is coming from a different direction than the actual source, due to sound reflecting from various buildings.

To better understand the acoustical environment in the vicinity of 1 Bloor West, I did a site visit and direct observations. These are discussed below.

### **3.0 SITE VISIT AND OBSERVATIONS**

I visited the site on October 4, 2022 from about 4:45 am to 7:45 am. Observations were made from street level as well as from the 6<sup>th</sup> floor roof of the podium section of the 1 Bloor West building.

The general area is built-up with several existing high-rise buildings in close proximity to each other. The ground in the vicinity is all acoustically hard (being either paved, road, lane or sidewalk).

The ambient noise environment at that time was made up of a general “urban hum”, mostly vehicle traffic and building mechanical systems. There was the occasional truck pass-by on the adjacent roads as well as bus traffic. Municipal street vacuuming equipment was also being used along Yonge Street, before 7 am, which significantly stood out from the background ambient. In addition, there are other construction sites in the vicinity that increase the noise levels in the area. At the time of the site visit, construction activity was observed at 2 Bloor Street West, north of the site. This work is related to the construction of a 3-Level flagship retail store and it is understood to involve removing portions of the façade and modifying portions of the concrete exterior. It is further understood that there are several other buildings currently under construction in the vicinity including those at 8 Cumberland Street, 11 Yorkville Avenue and 33 Yorkville Avenue.

With the ambient and existing environment as described above, the phenomena of masking and difficulty localizing sound sources were apparent. For example, when the municipal street cleaning machine was in operation on the adjacent roadways, it was difficult to localise its position by aural observation alone. It wasn't until visual observations of the machine could be made that the location became apparent. The same was observed with idling trucks and construction noise occurring off site. The noise could be heard, but without visually confirming the location of the trucks or construction, it was difficult determine where the activity was occurring from by the sound alone.

To better understand and quantify the ambient environment, sound level measurements were done atop the 6<sup>th</sup> floor podium section of the building. An approximate 30-minute continuous equivalent sound level ( $L_{eq\ 30\ min}$ ) was determined between about 5:35 am to 6:05 am. The measured  $L_{eq\ 30\ min}$  was about 57 dBA. For comparison, the background ambient sound levels at this time of night in other less busy areas of the City would likely be 45 dBA or less. (Night is considered 11 pm to 7 am). The difference is over 10 dBA. A 10 dBA change in sound level is roughly equivalent to a doubling (or halving) of the perceived loudness. Thus, the background ambient sound in the vicinity can be considered somewhat high, being perceived as at least twice as loud as a typical residential area removed from road traffic noise sources. It is also noted that

the measurements were done at a time when the background ambient sound levels would be relatively low compared with other at times of the day or night. That is, at other times (specifically those closer to the defined daytime and evening hours, 0700 to 2300), the ambient sound levels would be expected to be higher than those measured.

#### **4.0 NOISE EXEMPTION PERMIT APPLICATION**

As part of the Noise Exemption Permit application an assessment of on-site activity sound levels was included. This was documented in the Noise Assessment Summary letter prepared by Aercoustics Engineering Ltd., dated September 15, 2022 (The AEL Letter). The AEL Letter includes sound measurements of the various noise sources operating at the subject site. The measurement data shows that each source is in compliance with the sound level requirement in Subsection 3.2. D. (4) of the Noise By-law.

It is understood that since the measurements done in the AEL Letter, noise mitigation measures have been implemented at various locations on the site including at the manned material hoists. Thus, the sound levels shown are likely conservative. Nonetheless, even with the potentially higher sound levels, the site is still in compliance with the sound level limit required to obtain a Noise Exemption Permit.



#### **5.0 ACOUSTICAL BENEFITS TO EXPEDITED CONSTRUCTION**

The Noise Exemption Permit will allow construction to occur over longer hours in the day, which will help to expedite the construction and move up the overall completion date of the project. This will allow the construction to progress to higher floors at a faster rate. The proposed building will be taller than any of the surrounding buildings, and as construction activities begin to occur at the higher storeys there will be greater distance separation from the surrounding buildings to most of the noise producing activity. The greater distance separation will result in lower sound levels at the surrounding buildings. In addition, at the higher storeys there is a greater possibility of self screening of the construction activity, i.e., the subject building itself interrupting the line-of-sight between the construction activities and the surrounding buildings. This "barrier effect" can further reduce the experienced sound levels.

Therefore, the expedited construction will result in the experienced sound levels at the surrounding buildings being reduced more quickly.

Yours truly,

**VALCOUSTICS CANADA LTD.**

Per:    
**Mark Levkoe, B.Sc.E., P.Eng.**

TAB FOUR

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# NOISE EXEMPTION PERMIT

This permit must be posted in a visible location, seven days before the noise takes place.

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2573742

# P45-5231739

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**Site Address:** 1 BLOOR ST W

**Issued To:** MIZRAHI DEVELOPEMENT GROUP (THE ONE) INC

**Exemption Type:** CONSTRUCTION

**Hours of Operation:**

October 31, 2022 to December 01, 2022  
5:00am to 11:00pm

**Condition(s):**

- Sound level emitted from any equipment shall not exceed a sound level of 85 dBA when measured 20 metres from the source.
  - Where sound exceeds the 85 dBA level above, the applicant shall comply with any request made by a Police Officer or Bylaw Enforcement Officer to ensure compliance.
  - No sound equipment or construction equipment other than equipment approved under the exemption permit shall be used by the applicant.
- 1 Bloor Street West (The One) Construction

**Carleton Grant**  
**Executive Director**  
**Municipal Licensing and Standards**