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**TO:** Council

**SUBMITTED BY:** Brian T. Smith, Interim CAO

**DATE:** September 23, 2020

**SUBJECT:** First Reading – Chapter 100 Noise By-Law

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### **ORIGIN**

Council discussed the Noise By-Law at several recent sessions, the most recent being Council on July 27, 2020.

### **BACKGROUND**

When the draft Noise By-Law was last discussed by Council in July, most of the comments were about Section 3.0 Scope, and the provisions for specific Decibel Levels during day and night-time hours.

Staff were asked to do further work on the wording in that Section (adding continuous to Section 3.1), to clarify the definition of A-weighted continuous noise levels, and look into separating the Industrial Park and other commercial areas from the residential areas in terms of regulation of noise levels.

### **DISCUSSION**

The Noise By-Law was one of the carry forward issues identified as part of the transition to the Interim CAO. After reviewing the minutes and video from the last Council session and consulting with the solicitor, it was decided to use a slightly revised base or model by-law. The Interim CAO has had experience with this model in use by another Valley town, and it had been updated as recently as 2016.

The following changes were made:

- 1) Council did a poll among its members on July 27<sup>th</sup>, after discussing noise levels in Section 3, and it appears that the poll supported the following levels, which are now included Section 3 in the proposed Noise By-Law:

<b>7:00am – 10:00pm</b>	<b>90 dBA</b>
<b>10:00pm – 7:00am</b>	<b>65 dBA</b>

There was some discussion about what other Town By-Laws had for levels, and some of these are listed here for information:

	Bridgewater	Truro	Wolfville	Windsor-W.H.*
7:00am – 10:00pm	90 dBA	65 dBA	65dBA	55/65 dBA
10:00pm – 7:00am	75 dBA	55 dBA	55 dBA	45/55 dBA

\*Windsor West Hants has separate levels for Commercial & Residential/or Institutional properties.



- 2) The definition for “A-weighted continuous noise levels” in most of the sample Town By-Laws relies upon one used in the Ontario Municipal Code (similar to the Municipal Government Act in Nova Scotia), which has a Section 29 on Noise, a section that would apply to Ontario municipalities generally. Here is some text from that document that is helpful in explaining the meaning of the “A-weighted” term:

#### Section 5-29.02 Definitions

*(c) “A-weighted sound level” shall mean the sound pressure level in decibels (dBAs) as measured with a sound level meter using the A-weighted filter network (scale) at slow response and at a pressure of twenty (20) micropascals. The A-weighted filter de-emphasizes the very low and very high frequency components of sound in a manner similar to the response of the human ear, and is a numerical method of rating human judgement of loudness.*

The meaning of this term is important, but in practical terms enforcement of a Noise By-Law will not depend on whether our by-law enforcement staff see measured sound levels exactly on the limits prescribed, but upon whether the sound levels are generally below or above the limits. In most cases, the noise by-law complaints involve individuals or organizations that are not respecting the needs of their neighbours for peace and quiet or are not aware of the concerns they have generated with a machine or activity. Section 2.0 Definitions in the enclosed Draft by law provides this more complete definition.

- 3) As the Windsor/West Hants Prevention of Excessive Noise By-Law provides as an example, it is possible to exclude a particular land-use type or area from the provisions of a municipal by-law. As a starting point for the Kentville Noise By-Law, it is suggested Council provide an exemption for properties within the boundaries of the Kentville Industrial Park and the properties in the Highway Commercial Zone along Park Street on the West End of Town. This is included in Section 5.11 of the proposed by-law.
- 4) Although not raised earlier in the Council review of this by-law, the proposed by-law provides in Section 6.0 for the granting of an exemption by the CAO rather than Council, as this would seem to be an administrative matter. There is a provision to appeal a decision by the CAO to Council should an applicant seek a second review of their application.

#### **POLICY IMPLICATIONS**

The institution of a Noise By-Law provides a policy context for this element of enforcement in terms of noise and nuisance complaints received by the Town.

#### **BUDGET IMPLICATION**

The addition of a Noise By-Law will require some minor equipment purchases and add to the enforcement burden of our Police and By-Law officials.

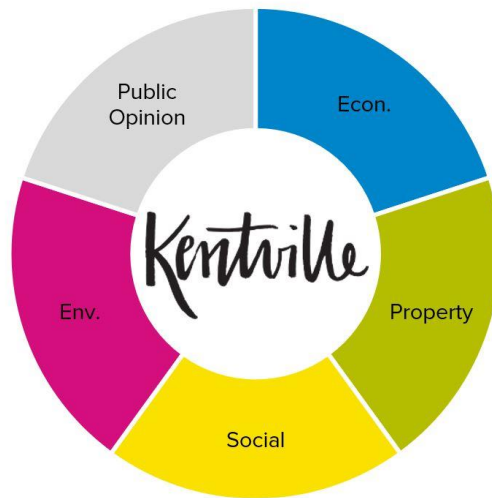
#### **ATTACHMENTS**

Council is aware that some correspondence has been received over time from residents involved with this noise issue. This Council package includes correspondence received from Pierre Hoebers on July 31, 2020 which relates to the issues under consideration.

#### **RECOMMENDATION**

That Council give First Reading to the proposed Noise By-Law, Chapter 100 enclosed with this report.

Town of Kentville Decision Wheel:





## **TOWN OF KENTVILLE BY-LAW CHAPTER 100 NOISE BY-LAW**

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### **1.0 PURPOSE**

This Bylaw is entitled the " Noise By-Law".

### **2.0 DEFINITIONS**

- 2.1. "A-weighted sound level" shall mean the sound pressure level in decibels (dBAs) as measured with a sound level meter using the A-weighted filter network (scale) at slow response and at a pressure of twenty (20) micropascals. The A-weighted filter de-emphasizes the very low and very high frequency components of sound in a manner similar to the response of the human ear and is a numerical method of rating human judgement of loudness.
- 2.2. CAO means the Chief Administrative Officer of the Town of Kentville;
- 2.3. Construction includes erection, alteration, repair, dismantling and demolition of structures and includes structural maintenance, hammering, land clearing, moving of earth, rock or felled trees, rock breaking, grading, excavating, the laying of pipe or conduit whether above or below ground level, working with concrete, alteration or installation of any equipment, the structural installation of construction components or materials in any form whatsoever, the placing or removing of any construction related materials and includes any related work, but does not include blasting;
- 2.4. Construction equipment means any equipment or device designed and intended for use in construction or material handling including but not limited to air compressors, air tracks, pile drivers, pneumatic or hydraulic tools, bulldozers, tractors, excavators, trenchers, cranes, derricks, loaders, backhoes, scrapers, pavers, generators, off-highway haulers or trucks, ditchers, compactors and rollers, pumps, concrete mixers, graders and other material handling equipment;
- 2.5. Council means the Council of the Town of Kentville;
- 2.6. Dwelling Unit means living quarters, accessible from a private entrance either outside a building or in a common area within a building, that are occupied or, if unoccupied, are reasonably fit for occupancy, and that:

- 2.6.1. contain kitchen facilities within the unit; and
- 2.6.2. have toilet facilities that are not shared with the occupants of other dwelling units;
- 2.7. Emergency Response Personnel includes police, fire departments or brigades, registered emergency services providers, search and rescue personnel, provincial, regional or municipal Emergency Measures Organizations, ambulance or emergency health services providers and includes volunteer or military personnel responding to an apparent condition of emergency;
- 2.8. Enforcement Officer includes a By-law Officer, Compliance Officer, Dog Control Officer or any other person appointed by the CAO or empowered by legislation to enforce this By-law;
- 2.9. Motor Vehicle includes an automobile, motorcycle, farm tractor or a self-propelled implement of husbandry, an off-highway vehicle as defined in the Off-Highway Vehicle Act, and any other vehicle propelled or driven otherwise than by muscular, gravitational or wind power, except a motorized Wheelchair;
- 2.10. Occupier means:
  - 2.10.1. A person who is a tenant of a dwelling unit, or
  - 2.10.2. A person who has responsibility for, or control over, a dwelling unit or the activities there carried on.
  - 2.10.3. For greater certainty, there may be more than one occupier of a dwelling unit.
- 2.11. Owner means a person or entity who actually owns the dwelling unit and to whom the property is deeded;
- 2.12. Police Officer means a member of the Kentville Police Service or municipal police force lawfully employed in the Province of Nova Scotia;
- 2.13. Private Property means real property upon which a dwelling unit is located, including driveways, lawns, yards and surrounding areas;
- 2.14. Sound System include a public address system, radio, compact disc player, computer or computer accessory, loud speaker, microphone, or any other device or apparatus, whether operated electrically, mechanically or in any other way whatsoever, whether moveable or stationary, whether located inside or outside a dwelling unit or motor vehicle, that reproduces, amplifies, emits, or transmits sounds;
- 2.15. Town means the Town of Kentville

### **3.0 SCOPE**

- 3.1. The following acts, among others, are hereby declared to be noises which disturb *continuously* or tend to disturb the peace and tranquility of any person located within the boundaries of the Town of Kentville or any portion of it:

3.1.1. Making any noise or combination of noises which, when measured on any property on which the noise is heard or the noises are heard, exceeds the applicable A-weighted continuous noise level as follows:

7:00 am -10:00 pm                      90 dBA

10:00 pm - 7:00 am                      65 dBA

3.1.2. The operation of any noise-creating blower power fan or any internal combustion engine, the operation of which causes noise due to the explosion of operation gases or fluids, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to attenuate excessive noise.

#### **4.0 OTHER PROHIBITIONS**

4.1. No person shall engage in any noise-making activity that unreasonably disturbs or tends to disturb the peace and tranquility of any person located within the boundaries of the Town of Kentville;

4.2. No person shall operate or cause or permit to be operated any sound system at such a level that the resulting sound is heard in a dwelling unit, other than the dwelling unit in which the sound system in question is located

4.3. No person who is in a dwelling unit shall be:

- 4.3.1. fighting,
- 4.3.2. screaming
- 4.3.3. shouting, or
- 4.3.4. singing

and thereby cause any loud and unnecessary noise heard on another property or at a boundary line of the other property, or in a dwelling unit other than the dwelling unit in which the noise is generated;

4.4. No occupier shall allow or permit to occur in the dwelling unit of which that person is the occupier, any activity prohibited as outlined under Section 4(4) above;

4.5. No occupier or owner shall engage in or permit any activity in a dwelling unit which unreasonably disturbs the peace and tranquility of the Town or any portion of it.

#### **5.0 EXEMPTIONS**

This By-Law does not apply to:

5.1. Employees of the Town of Kentville, the Province of Nova Scotia, the Government of Canada, Nova Scotia Power Incorporated, and any regulated utility when these employees are acting in the ordinary course of their duties;

- 5.2. Noises emitted by machinery or equipment when used under the provisions of (1) above;
- 5.3. A person or a corporation, or an employee of such person or organization, reasonably performing work at the request of any party described in (1) above;
- 5.4. Noise emitted by machinery or equipment used in snow removal and snow clearing operations.
- 5.5. Noises in connection with athletic, recreational or school activities in arenas, playing fields, courts, school grounds or Town park areas between the hours of 7:00 am and 11:00 pm;
- 5.6. Noises in relation to religious activities between the hours of 7:00 am and 11:00 pm;
- 5.7. Noises in relation to parades, street dances, or other community activities between the hours of 7:00 am and 11:00 pm subject to permission having been granted under Section 6 of this By-law;
- 5.8. Noises in connection with the Apple Blossom Festival and any event organized by the Town of Kentville that occurs between 7:00 am and 11:00 pm;
- 5.9. Notwithstanding any other provisions of this By-law, it is lawful to emit or cause or permit the emission of noise in conjunction with:
  - 5.9.1. Emergency Response Personnel services undertaken for the immediate health, safety and welfare of any person;
  - 5.9.2. Emergency Measures Response Personnel services undertaken for the preservation of property; and
  - 5.9.3. Emergency Response Personnel services undertaken for the purpose of training exercises;
- 5.10. Construction and construction equipment activities between the hours of 7:00 am and 8:00 pm.
- 5.11. Noises generated as part of normal industrial and commercial operations within the Kentville Industrial Park (Shiloh Drive to Town limits) and the lands zoned Highway Commercial on the west end of Kentville.

## **6.0 GRANT OF EXEMPTIONS**

An exemption from the application of this By-Law may be granted by the CAO upon receipt of a completed "Temporary Noise Permit Exemption Application" at least 10 days before the activity which may violate this By-Law. The request for an exemption may be in the form in Schedule 1, under the following terms:

- 6.1. In deciding whether or not to grant an exemption, the CAO shall give consideration to the social or commercial benefit of the proposed activity to the Town, the views of any residents of the Town which may be known to the CAO, the proposed hours of operation of the proposed noise making activity, the impact on residents, and the proposed duration of the subject activity;

- 6.2. Any exemption granted shall specify the time period, not in excess of six months, during which the exemption shall be effective and the exemption shall be in written form and shall include such terms and conditions as the CAO deems appropriate;
- 6.3. In deciding whether or not to grant an exemption, the CAO shall give the applicant and any person or persons who may be affected by the proposed activity an opportunity to be heard. The CAO shall notify, by regular mail, all property owners within 100 meters, advising that an application for an exemption has been received, and the CAO shall invite comment about the request for an exemption. Said notification shall be in Form 2, Noise Exemption Permit Application Notification.
- 6.4. The CAO may refuse to grant any exemption.
- 6.5. If the CAO determines that a breach of an exemption has taken place the CAO may revoke the exemption.
- 6.6. Upon the granting of an exemption by the CAO, the CAO shall deliver, by ordinary mail, to all property owners within 100 meters of the location of the exempt activity, notification of the exemption and information respecting an appeal. This notification shall be in the form of Schedule 2: Noise Exemption Permit Application Notification.
- 6.7. The decision of the CAO may be appealed by any person to Council. The grounds of appeal are limited to:
  - 6.7.1. a refusal by the CAO to grant an exemption; or
  - 6.7.2. the terms or condition of an exemption granted by the CAO.
- 6.8. Such an appeal must be initiated by notice in writing by any person to Council and received by the Municipal Clerk of the Town within seven business (7) days of the mailing date of Schedule 2: Noise Exemption Permit Application Notification.
- 6.9. Upon notification of an appeal, Council shall convene to hear the appeal within three (3) business days. The appellant or appellants shall have an opportunity to address Council before a decision is rendered. The decision of Council shall be final and take effect immediately.
- 6.10. An applicant who is granted an exemption to this By-Law by the CAO or Council shall sign and abide by all of the Terms and Conditions in Schedule 3.

## **7.0 PENALTY AND ENFORCEMENT**

- 7.1. Any Enforcement Officer or Police Officer may enter upon private property for the purpose of investigation and enforcement of this By-law;
- 7.2. In a prosecution for a violation of this By-law, evidence that one person, including a Police Officer or Enforcement Officer, is unreasonably disturbed by a prohibited activity is prima facie evidence that the peace and tranquility of the Town or any portion of it is unreasonably disturbed;
- 7.3. Any Police Officer or Enforcement Officer who believes on reasonable and probable grounds that there has been a violation of this by-law may issue a Summary Offence Ticket;



7.4. Every person who contravenes or fails to comply with any of the provisions of this By-Law shall be liable to a penalty of not less than two hundred dollars (\$200.00) for a first offence, not less than four hundred dollars (\$400.00) for a second offence, and not less nine hundred dollars (\$900.00) for a third and any subsequent offence.

7.5. Any person, upon conviction or upon a guilty plea, who does not pay his or her penalty within the time specified by the Court, shall be liable to imprisonment for a period of time to be determined by the Court.

## **8.0 REPEAL**

8.1. Any previous Noise Control By-laws and amendments thereto are repealed upon coming into force of this By-law.

## **9.0 CLERK'S ANNOTATION FOR OFFICIAL BY-LAW BOOK**

Date of first reading:

Date of advertisement of Notice of Intent to Consider:

Date of second reading:

\*Date of advertisement of Passage of By-law:

Date of mailing to Minister a certified copy of By-law:

I certify that this Noise By-Law – Chapter 100, was adopted by Council and published as indicated above

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date

\*Effective Date of the By-Law unless otherwise specified in the By-Law

## **Schedule 1. Temporary Noise Exemption Permit Application**

The Town of Kentville's Prevention of Excessive Noise By-law No. 64 allows a person to apply for a permit to engage in any activity that creates a noise that is otherwise prohibited by this by-law. The application must be received in writing at least ten (10) calendar days prior to the requested issuance date and time of the noise for which an exemption is sought.

Submit form(s) to the CAO, Town of Kentville, 354 Main Street, Kentville, N.S. B4N 1K6

Location of noise activity:

Type of noise (music, construction, etc.):

Reason for request (exceeds noise levels, exceeds hours allowed, etc.):

Estimated time of events (example 5am-10am):

Any other information the applicant wishes to submit (attach a separate sheet of paper).

Date(s) of event

Applicant Name:

Print Name:

Applicant Mailing Address:

(Street) (City, Province, Postal Code)

Phone: Daytime: Night: Cell:

Email:

Property Owner Name if different from Applicant:

Note: If different, applicant must attach letter from property owner authorizing use.

Address:

(Street) (City, Province, Postal Code)

If application is denied or modified, applicant may appeal to Town Council.

Applicant Signature:

Print Name:

Date:

**Town of Kentville, By Law Chapter 100: Noise By-Law**

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OFFICE USE (TOWN OF KENTVILLE)

Application is:        ☐ Approved                ☐ Modified                ☐ Denied

By:                                Date:

Applicant notified:    ☐ Mail                ☐ Fax                ☐ Email                ☐ Telephone

By:                                Date:

Appeal decision:

Permit Issued:

By:                                Date:  
Permit:

Note to Applicant: The Town will deliver, by mail, a notice to all property owners within 100 meters of the property upon which the noise originates if an exemption is granted. The decision of the CAO regarding this request is appealable to Council by the applicant or any person.

## Schedule 2: Noise Exemption Permit Application Notification

Name of Property Owner

Address of Property Owner  
(Street)  
(City, Province, Postal Code)

Dear Resident or Business Occupant,

In accordance with the Town of Kentville's Prevention of Excessive Noise Bylaw, you are being notified that an application has been submitted to the Town of Kentville requesting a permit for a temporary exemption to the provisions of the Prevention of Excessive Noise Bylaw for the purpose of (type of noise)

The requested dates/times are (month, date, year, times)

Pursuant to this By-Law, the Chief Administrator Officer (CAO) of the Town of Kentville has the discretion to grant or refuse to grant an exemption. The decision of the CAO may be appealed to Town Council.

If you wish your views on this application to be known to the CAO, you should immediately contact the CAO in writing at 354 Main Street, Kentville, or by calling 902-679-2503 or by email at [CAO@Kentville.ca](mailto:CAO@Kentville.ca).

Respectfully,

Signature  
Name  
Title

### **Schedule 3, Terms & Conditions**

The applicant agrees to abide by the following terms and conditions:

Individuals in attendance are expected to abide by all posted parking signage. On-street parking is restricted to a maximum that is indicated.

If the applicant is not the owner of the property for which the exemption is requested, the applicant shall provide a letter of approval granting the applicant permission to apply for a noise exemption. Where the property owner is a professional entertainment or event venue, no letter of approval is required.

The applicant shall post in a conspicuous location the letter of approval for the requested noise exemption and shall be able to produce a copy of the letter during the event if requested by a law enforcement official.

The applicant will abide by any additional terms and conditions identified by the CAO and set out in the letter of approval granting the requested noise exemption

Issued permits may be revoked at the sole discretion of the CAO.

Failure to comply with any terms and conditions of the noise exemption may be considered by the CAO in any future requests for an exemption from this bylaw.

#### **Agreement & Signature**

Applicant's Signature

Date

Town of Kentville Office Use Only

The above exemption to the Town of Kentville's Noise Bylaw is:

Approved: [ ]

Approved, but with the following conditions: [ ]

Not Approved: [ ]

Town of Kentville, CAO

Date