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Memorandum Escalating Administrative Monetary Penalties Staff Report to Council

Monday, December 12, 2022

To: Mayor and Members of Council
From: Ben Worthington, (Acting) Manager of Regulatory Services
Re: **Escalating Administrative Monetary Penalties**

This memorandum is an accompaniment to Staff Report 2022-61. At the December 5, 2022 Committee of the Whole Council meeting, Town staff proposed an escalated model to increasing contravention fine amounts under the Town's Administrative Monetary Penalty System ("AMPS") By-law 2019-62. Under this newly proposed enforcement model, increased fines would only pertain to repeat offences within 365 days.

Staff response to questions raised by Council

At the regular Committee of the Whole meeting on December 5, 2022, Council asked several questions of staff in relation to the staff report and proposed by-law presented. Town staff has taken the time to research and review all questions raised and can provide Council with an update as follows:

1) With regards to the noise by-law, what offences target business noise after 11:00 pm?

Section 3.1, *Make, cause or permit the emission of noise likely to disturb* (item line number 281) would apply to all business noise at all times. Section 4.1, *Make or permit noise during prohibited time* (item line number 292) would only apply to yelling, shouting, hooting, whistling or singing within 100 metres of a hospital,

retirement home, nursing home, senior citizens residence or other establishment of similar use at all times.

2) How does escalating Administrative Monetary Penalties address business noise after 11:00 pm?

Staff would typically issue a penalty under the Noise Bylaw, Section 3.1, *Make, cause or permit the emission of noise likely to disturb* and under the newly proposed model for escalating Administrative Monetary Penalties, staff would issue escalating penalties that gradually increase with repeat offences. If the escalated Administrative Monetary Penalties do not incentivize a change in behavior, staff would explore revoking the business license of the establishment providing more opportunity to issue charges for non-compliance or enforcement through Provincial Court processes.

3) Is there anything from a legal perspective that would stop us from increasing penalties for noise?

Under the Municipal Act, Administrative Monetary Penalties *shall not exceed the amount reasonably required to promote compliance with a by-law of the municipality*. As it is well documented that the pre-existing penalties for business noise violations have not incentivized a change in behavior, it would be considered reasonable to increase the amount to promote compliance.

4) Are staff starting from the 1st tier or the increased 3rd tier for repeat violations within the past 365 days?

As this is a proposed amendment to our by-laws, any offences should start at the 1st tier in order to avoid a challenge. However, in the case of business noise, it would escalate quickly if businesses continued this type of behavior. It is possible that staff will observe enough separate violations to increase charges to the 3rd tier in a single weekend.

5) Is it possible to conduct proactive enforcement for business noise?

Staff currently provide proactive enforcement for identified “Hotspot” or “Special Enforcement” locations in areas that are known to have reoccurring issues. The same can be applied to proactively enforcing business noise related offences.

6) Is it possible to issue multiple penalties for multiple violations at the same time?

Yes, however it is a standard practice that staff provide the opportunity for any person or business to change their behavior regarding a specific violation by means of issuing warnings, prior to proceeding with penalties. Staff would recommend the

same approach during the course of an investigation, prior to issuing a supplementary charge in addition to the main concern of a business noise violation.

7) Would the penalty for *operating without a business license* apply to other license categories such as a Patio License?

The penalty for operating without a business license would apply to all business licence categories found within the Business Licence By-law, such as, pet stores, short-term rental companies, short-term rental operators, outdoor serving areas, commercial rooftop patios, and personal wellness establishments. This penalty would not apply to any of our classifications found within our Mobile Business By-law, or any of our stand-alone Licensing By-laws, such as, fireworks, hawkers and peddlers.

8) Could a penalty for *operating without a business license* be issued daily?

Yes, as long as the violation persists.

9) Does the penalty for *permit live music contrary to bylaw* apply to all types of live music violations, such as backyard music or a DJ?

Section 8.5, *permit live music contrary to bylaw* (item line number 108) of the Business Licensing Bylaw only applies to commercial rooftop patio's, but does capture any form of live performance including the use of a device or electronic equipment to amplify music, such as a DJ. Historically, staff would defer to issuing a penalty under *make, cause or permit the emission of noise likely to disturb* to enforce these types of concerns.

10) If the penalty for *permit live music contrary to bylaw* was increased, would that only apply to businesses?

Permit live music contrary to bylaw would only apply to the rooftop patio of a business.

11) If a penalty is issued for a violation, do staff feel compelled that they have to issue an escalated penalty amount or is that at their discretion?

Staff are responsible for applying their professional discretion, with the overall goal of providing an objective and consistent level of enforcement, town wide. It should be presumed that if two identical situations were to happen, staff would apply the same level of enforcement within a reasonable degree.

12) Does the penalty for *Make, cause or permit the emission of noise likely to disturb* apply to everyone?

Yes, the penalty would apply to everyone – residents and business owners alike.

13)What is the process for escalating enforcement?

Staff directed to escalate their level of enforcement by following the Progressive Enforcement Model, starting with Public Education;

Progressive Enforcement Model



14)Would the penalty for *make or permit noise during prohibited time* apply to a business venue that was playing music after a restricted time, indoors or outdoors?

No. In regards to business noise, this section would only apply to yelling, shouting, hooting, whistling or singing within 100 metres of a hospital, retirement home, nursing home, senior citizens residence or other establishment of similar use at all times.

15) Would the penalty for *failure to comply with legislation* apply to any other municipal by-law that is not in compliance, such as the zoning by-law?

The intention of this provision is to ensure compliance with all other applicable laws prior to the issuance of a Town business licence. This provision is also enforceable under AMPS in circumstances where a business contravenes a requirement of their business licence after having already obtained their licence. It is not intended to enforce other Town bylaws enacted: we need to rely on those bylaws (i.e. noise, zoning, etc.) to enforce the specific contraventions occurring. Additionally, we cannot enforce zoning under a business licensing bylaw, as land use matters draw their powers from the Planning Act and Town zoning bylaws, none of which are enforceable under AMPS.

16) Has any consideration been made to separate business noise and residential noise as two separate by-law violations?

Yes, this topic is to be considered as part of the Regulatory Services Review set to begin late January, early February.

17) Would the penalty for *make or permit noise during prohibited time* apply to a backyard party?

Yes, but only in the capacity of yelling, shouting, hooting, whistling or singing within 100 metres of a hospital, retirement home, nursing home, senior citizens residence or other establishment of similar use at all times. Historically, staff would defer to issuing a penalty under *make, cause or permit the emission of noise likely to disturb* to enforce these types of concerns.

General Housekeeping Items

- Corrections made to errors under bylaw item numbers 248 and 249 pertaining to Limousines
- Bylaw item number 170 adjusted to provide exemption from escalating penalty amounts pertaining to election signs
- Escalating Administrative Monetary Penalties is to be monitored to assess its effectiveness and brought back to council upon request.

Conclusion

Based on the above information gathered, staff would recommend that Council only increase fine amounts for item line numbers 58-61 and 281, and maintain the original

penalty amounts for item numbers 49, 50, 108 and 292. The attached amended Administrative Monetary Penalty System by-law is based on recommended changes after staff review.

For more information, call the Town of Newmarket at 905-895-5193 or email info@newmarket.ca.