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Item 11.1
Transportation Standing Committee
July 27, 2017
Sep 28, 2017

TO: Chair and Members of Transportation Standing Committee

Original Signed

SUBMITTED BY:

John Traves, Q.C., Director, Legal, Municipal Clerk & External Affairs

DATE: May 10, 2017

SUBJECT: Restriction and Control of Motor Vehicle Noise

INFORMATION REPORT

ORIGIN

At the October 22, 2015 Transportation Standing Committee meeting the following motion was put and passed:

THAT the Transportation Standing Committee request a staff report to outline options under the current or amended noise bylaw and/or the *Motor Vehicle Act* to set standards that may restrict and control motor vehicle noise especially muffler noise.

LEGISLATIVE AUTHORITY

Motor Vehicle Act, R.S.N.S. 1989, c.293:

Muffler or fumes

187 (1) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise, and no person shall use a muffler cut-out, by-pass or similar device upon a vehicle on a highway.

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Excessive noise

188 No person shall start, drive, turn or stop any motor vehicle, or accelerate the vehicle engine while the vehicle is stationary, in a manner which causes any loud and unnecessary noise in or from the engine, exhaust system, braking system or from the contact of the tires with the roadway.

Regulations respecting equipment

- 200 (1) The Governor in Council may make regulations
- (a) requiring the use or incorporation of any equipment, material or device, in or on any vehicle, that may affect the safe operation of the vehicle on the highway or that may reduce or prevent injury to persons in a vehicle on a highway or to persons using the highway, and prescribing the specifications thereof;
 - (b) designating any equipment, material or device and designating an organization to test and mark its approval of any equipment, material or device so designated, and prohibiting the incorporation or use in or on a vehicle of any equipment, material or device so designated that is not marked as approved by the testing organization;
 - (c) prohibiting the sale or use of any equipment, material or device.

Restriction on municipal regulation of vehicles

- 306 (1) Notwithstanding the provisions of any Act of the Legislature, the council of any city, town or municipality shall not, except as in this Act provided, have power to make any by-laws, rules, regulations or ordinances in relation to the regulation, registration, licensing or identification of vehicles or to the use of the highway by such vehicles, or in relation to any matter dealt with in this Act, and all by-laws, rules, regulations and ordinances of any city, town or municipality in relation to any of the said matters, except those mentioned in Section 305, are hereby repealed and are declared to be inoperative.

By-law N-200, Respecting Noise, section 3 and Schedule "A":

3. (1) No person shall engage in any activity that unreasonably disturbs or tends to disturb the peace and tranquillity of a neighbourhood.
- (2) Without limiting the generality of subsection (1), the activities listed in Schedule "A" during the prohibited times and places as set out therein are deemed to be activities that unreasonably disturb the peace and tranquillity of a neighbourhood.
- (3) For the purpose of a prosecution pursuant to subsections (1) or (2), evidence that one neighbour is unreasonably disturbed by a noise is prima facie evidence that the neighbourhood is unreasonably disturbed by the noise.

Schedule "A"

Part 1

Activities that unreasonably disturb the peace and tranquillity of a neighbourhood throughout the whole Municipality, and at all times, where the sound resulting therefrom is audible at a point of reception.

1. The operation of any combustion engine or pneumatic device without an effective exhaust or intake muffling device in good working order and in constant operation;

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BACKGROUND

For many years Councillors have received complaints from residents regarding vehicle muffler noise, with the issue being brought up at both Committee and Regional Council levels on many occasions. Below is a snapshot of the recent history on this issue.

July 1, 2002 –HRM media release identified both the upper and lower parking lots at Point Pleasant Park would be closing at 9:30 pm to address vehicle congestion and noise.¹

March 29, 2005 – Halifax Regional Police (HRP) provide an information report to Halifax Regional Council titled “Norsonic Sound Device for Police Services”. The report resulted from a motion of Regional Council on November 23, 2004 to investigate the use of a Norsonic Sound Analyser or similar device as a means of measuring noise levels. The report included cross-jurisdictional research of Municipal noise by-laws. The report states such a device was considered to be not practical for measuring decibels levels to address noise complaints.

May 18, 2005– The Private Members Bill No. 218 was introduced in the Nova Scotia Legislature to amend the *Motor Vehicle Act*.² The Bill would give the Minister authority to make regulations prescribing acceptable decibel levels for noise emanating from an exhaust system; outlaw mufflers that do not meet these levels; and give police authority to measure decibel levels and to ticket violators. The Bill did not go beyond 1st reading.

July 5, 2006 – HRM media release calling on members of the legislature to support the private member’s bill.³

October 2, 2006 – a presentation by Dr. Roland-Mieszkowski was made to Peninsula Community Council regarding vehicle noise.

February 5, 2007 – HRP provide an information report to Peninsula Community Council in response to Dr. Roland-Mieszkowski’s presentation of October 2, 2006. The report addresses four areas identified in the October 2, 2006 presentation:

1. elimination of “straight pipes” by police enforcement of the existing law (no mufflers);
2. amendments to existing noise by-laws in consultation with acoustical experts;
3. development of simple and effective test and inspection procedures by police, motor vehicle inspectors, etc.; and
4. introduction of stiff fines reflecting social impact and dangers associated with high noise levels.

In the report, HRP identified that items one and three fall under Provincial jurisdiction; item two was addressed in their report to Regional Council of March 29, 2005 (the Norsonic Sound Device for Police Services report); and, item four is addressed by the progressive fine structure under By-law N-200.

October 18, 2011 – Information Report before Regional Council regarding petition submitted on August 10, 2010 re: motorcycle noise. Report identified that HRP had representation on the Motor Vehicle Rewrite Committee with the Province. At the time of the report it was identified that the proposed legislation was slated for the Spring of 2012. The *Motor Vehicle Act* rewrite is ongoing and has yet to go forward to the Legislature

Statistics

HRP has laid charges under the *MVA* for noisy vehicles. Tickets were issued mostly for noisy engines and squealing tires, and occasionally for noisy mufflers in cars and trucks. Tickets were rarely issued to motorcycle drivers. The following table (Table 1) sets out the charges laid by HRP under the sections 187 and 188 of the *MVA* for noisy vehicles over the last three years:

¹ Monday, July 1, 2002 - Public Service Announcement, “Parking Lot to Close at 9:30 p.m.”

<http://www.halifax.ca/mediaroom/pressrelease/pr2002/020701pointpleasantparkinglotclosure.php>

² Bill 218, Introduced May 18, 2006,

http://nslegislature.ca/legc/bills/59th_1st/1st_read/b218.htm

³ Wednesday, July 5, 2006 – News Release, “Councillors Want Noisy Mufflers Outlawed.”

<http://www.halifax.ca/mediaroom/pressrelease/pr2006/060705NoisyMufflers.php>

Table 1: Charges laid under the MVA respecting noisy vehicles

Year	MVA Provision	
	187(1)	188
2014	17	58
2015	9	46
2016*	7	42

*as at Sept. 13, 2016

DISCUSSION

Legislation to address excessive vehicle noise is found in both the *Motor Vehicle Act (MVA)* and HRM's Noise By-law, N-200.

Enforcement of the provisions dealing with loud muffler noise falls under police jurisdiction unless the excess noise is coming from private property, in which case Municipal Compliance would deal with the complaint. In the case of police, an officer has the option to lay charges under the *MVA* or the Noise By-law. In the case of Municipal Compliance, as by-law enforcement officers they may lay a charge under the Noise By-law. The "test" for a charge under the Noise By-law, unreasonably disturbing the neighbourhood, is found in subsection 3(3) of the HRM Noise By-law. Vehicle owners have been prosecuted under By-law N-200 for noisy vehicles. As noted in Table 1, HRP also issues tickets for noisy vehicles under the *MVA*.

As discussed in the background section the issue of loud vehicle noise, especially from mufflers, is brought up every few years. The responsibility lies with the Province regarding vehicle compliance, standards for vehicle equipment and standards for vehicle inspections at licensed facilities. Section 306 of the *MVA* does not give the Municipality the authority to put in place by-law amendments to regulate vehicle equipment (straight pipes, after-market muffler systems), or vehicle inspections. Any municipal by-law that attempts to regulate in an area not authorized under the *MVA* would be declared inoperative. This keeps regulatory requirements the same regardless of location in the province.

Legislative Options for Addressing Motor Vehicle Noise under the Motor Vehicle Act

1. Request amendments to the *Standards for Vehicle Equipment Regulations*

HRM could request the Province amend the *Standards for Vehicle Equipment Regulations* to set equipment standards with respect to mufflers by:

- (i) requiring exhaust systems meet a certain decibel level;
- (ii) that the decibel level be certified; and
- (iii) to make it an offence to sell or use equipment that does not meet the standard.

Subsection 200(1) of the *MVA* allows the Governor in Council to make regulations regarding the use or incorporation of equipment in vehicles, or to prohibit the sale or use of certain equipment, material or devices. Amending a regulation can be done through an Order in Council and does not require amendments to the statute.

The following table (Table 2) sets the positive and negative attributes to regulating muffler noise by decibels:

Table 2: Pros and Cons of Regulating Decibel levels of Mufflers

Pros	Cons
<ul style="list-style-type: none"> - Sets a level for objectionable noise that can be measured. - Technology exists to measure noise levels. - Anecdotal reports that the by-law measures in Edmonton are proving effective: “The city police are way ahead of other cities in that they have a unit that is trained on the specific technology that is credible in the courts.” (Elise Stolte , <i>Edmonton Journal</i> January 21, 2016- Edmonton police plan 2016 crackdown on noisy motorcycles) 	<ul style="list-style-type: none"> - Requires legislative amendments before anything can be done. - Requires purchase of equipment and training of police resources. - People may find a noise disturbing at a level less than the identified decibel level. Under the current HRM by-law the person causing the offending noise can be charged; under a by-law or provincial regulation that sets decibel levels there may be no ability to charge - Decibel equipment and equipment operators will be challenged in court, similar to the evidentiary requirements for breathalyser equipment and testers. - Requires buy-in by police force - Courts would need to be educated on the credibility of the technology

The impact of amending the *Standards for Vehicle Equipment Regulations* to set decibel levels for mufflers is that it would apply not only vehicles in HRM but throughout the Province. It is anticipated there would also be an impact on motor vehicle inspections and the work of the Provincial inspectors. There is no guarantee the Province would entertain amending the *Standards for Vehicle Equipment Regulations* as the burden to enforce these regulations would fall primarily on the Province’s resources.

2. Request amendments to the *Motor Vehicle Act*

HRM could request the Province amend the *MVA* to address the issue of noisy mufflers. There are two ways of achieving this.

- (a) One approach is for the *MVA* to be amended by giving the Minister the authority to make regulations prescribing: “acceptable decibel levels for noise emanating from an exhaust system; outlaw mufflers that do not meet these levels; and give police authority to measure decibel levels and to ticket violators”. This is the approach identified in the amendment put forward in the private members bill in 2006.
- (b) The other approach is to request the Province amend the *MVA* giving HRM the authority to create a by-law that addresses these issues. Currently the *MVA* restricts what a municipality can regulate by by-law under section 306. One provincial jurisdiction that gives this power to municipalities is the Province of Alberta through the *Traffic Safety Act*, RSA 2000, Chapter T-6:

General powers of municipality

- 13 (1) Subject to this Act and the *Dangerous Goods Transportation and Handling Act*, the council of a municipality may, with respect to a highway under its direction, control and management, make bylaws that are not inconsistent with this Act, doing the following:
 - (g) with respect to noise produced in connection with a vehicle,
 - (i) defining what constitutes an objectionable noise,
 - (ii) establishing a method of determining or measuring noise, and
 - (iii) prohibiting the use or operation of a vehicle where the noise produced in connection with that vehicle is objectionable noise;

In 2010, through the powers granted by the *Traffic Safety Act*, the City of Edmonton enacted motorcycle noise standards in By-law 14600 – Community Standards By-law. The standards are as follows:

- 18.1 A person shall not operate a motor cycle that is capable of:
- (a) emitting any sound exceeding 92 db(A), as measured at 50 centimetres from the exhaust outlet, while the engine is at idle; or
 - (b) emitting any sound exceeding 96 db(a), as measured at 50 centimetres from the exhaust outlet, while the engine is at any speed greater than idle.

A re-write of the Nova Scotia *Motor Vehicle Act* is currently on-going. It may be premature to request amendments to the *Motor Vehicle Act* until the re-write is complete.

3. Maintain Status Quo

There are currently provisions in both the *MVA* and HRM's Noise By-law dealing with excessive noise. The legislative framework already exists to allow the laying of charges and prosecution under the *MVA* and N-200, *Respecting Noise*, where warranted.

Any decision to focus resources on laying charges against persons who operate excessively noisy vehicles is an operational decision of HRP. The appropriate place for setting of enforcement priorities belongs with the Chief of Police.

FINANCIAL IMPLICATIONS

No financial implications with this report

COMMUNITY ENGAGEMENT

None

ATTACHMENTS

None

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> or other appropriate Committee link then choose the appropriate Community Council/Board and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

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