

HALIFAX

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Item No. 8.3
Halifax Regional Council
June 29, 2021

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: April 21, 2021

SUBJECT: **Noise Exemption Request - Birch and Anchor**
367 Bedford Highway, Bedford

ORIGIN

March 18, 2021 – Staff received an application from the Owner of Birch and Anchor Beer Garden and Event Space for an exemption from By-law N-200, Respecting Noise, outlined as Appendix A.

LEGISLATIVE AUTHORITY

By-law N-200, Respecting Noise, Part 6; Grant of Exemptions by Council.
(See Appendix B)

RECOMMENDATION

It is recommended that Halifax Regional Council approve the Birch and Anchor's application for an exemption from the provisions of the Noise By-law pursuant to the discussion section of this report and any matters raised at the public hearing.

BACKGROUND

By-law N-200, the *Noise By-law*, states under Section 3 of the **General Prohibition** section:

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.

Part 6 of the By-law, “**Grant of Exemptions by Council**”, allows for any person to send an application to Regional Council requesting an exemption from any or all provisions of the Noise By-law for which that person may be prosecuted. The By-law states that an applicant or any person opposed to an application may be heard at a session of Council. Notice of the Council Session is required to be mailed to assessed property owners located within 100 feet of the properties which are subject to the hearing.

Part 6A of the By-law, “**Grant of Exemptions by Staff**”, allows the CAO or delegate to grant an exemption for a recurring event where a previous application was approved by Regional Council. The exemption may be granted if there are no significant changes to the scope of the event and associated benefits should all information in the application be substantively the same as the application approved by Council.

In deciding whether or not to grant an exemption, Council is to give consideration to:

- the social or commercial benefit of the proposed activity to the municipality;
- the viewpoints of community residents;
- the proposed hours of operation of the proposed noise-emitting activity; and
- the proposed duration of the subject activity.

An excerpt from the Noise By-law detailing the exemption process is attached as Appendix B.

DISCUSSION

The Birch and Anchor Beer Garden and Event Space located at 367 Bedford Highway, Bedford is a local waterfront restaurant that can safely seat 300 people outside. The owner of Birch and Anchor has advised that they are looking for a noise exemption to be able to hold musical performances hosted at the property in conjunction with local companies and charities. The original request was submitted prior to the current Health Protection Act orders. Subject to provincial orders being eased, the proposed events would be held on Friday, Saturday and Sundays of the long weekends of Victoria Day, Natal Day and Labour Day, as well as the Friday, Saturday and Sunday of the Father’s Day weekend and on Canada Day, which is a Thursday. The location where the musical performances will occur also serves food and is fully licensed. The owner has advised that the entertainment will conclude by 10 p.m., with the location closing at 11 p.m. to limit the noise impacts on nearby residential neighbours.

The Birch and Anchor has an existing NS Alcohol and Gaming license issued from Service Nova Scotia to serve alcohol in the areas that host these events.

Due to the prohibited times identified in the by-law, a noise exemption is required to be able to host the above noted events until 10 p.m. The owner of Birch and Anchor has requested a noise exemption from By-law N-200, Respecting Noise for the period of May 21st to September 6th, 2021 on

Fridays, Saturdays, and Sundays for the following times:

Fridays – 9:30 p.m. to 10:00 p.m.
Saturdays – 7:00 p.m. to 10:00 p.m.
Sundays – 7:00 p.m. to 10:00 p.m.

and for the following time on Thursday, July 1 (Canada Day) – 9:30 pm to 10:00 pm

Notice of the Council Session at which the hearing is proposed to take place has been sent to property owners within 100 feet of the location identified in Appendix C.

Under subsections 6(3) and (5) of the Noise By-law, Council may consider any matters it deems appropriate at the hearing and either reject an application or approve it with or without conditions.

FINANCIAL IMPLICATIONS

There are no financial implications.

RISK CONSIDERATION

There are no significant risks associated with the recommendation in this report. A request is being made for Council to approve a noise exemption request for the Birch and Anchor Beer Garden and Event Space. The risks considered rate Low.

COMMUNITY ENGAGEMENT

The Birch and Anchor Beer Garden and Event is a locally owned business with ties to the community. There are two records of previous noise complaints received for this property.

ENVIRONMENTAL IMPLICATIONS

The Owner has confirmed appropriate waste and recycling practices will be followed. Containers will be provided on site to facilitate proper sorting with additional sorting taking place on site after each event.

ALTERNATIVES

1. Regional Council grant the Birch and Anchor's application for an exemption from the provisions of the Noise By-law with conditions
2. Regional Council refuse to grant the Birch and Anchor's application for an exemption from the provisions of the Noise By-law in its entirety.

ATTACHMENTS

Appendix A: March 18, 2021 Application for Exemption from By-law N-200, Respecting Noise
Appendix B: Excerpt from By-law N-200 respecting Noise re: Granting Exemptions by Council
Appendix C: Aerial view of property

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Tanya Phillips, Program Manager By-Law Standards 902.490.4491

Appendix A

BIRCH & ANCHOR

March 18, 2021

Michael Yould

Owner- Birch & Anchor Beer Garden and Event Space

[REDACTED]
367 Bedford Highway, Halifax NS
B3M 0M2

In these unprecedented times, Nova Scotians need a safe place more than ever to enjoy the short months of summer. Birch & Anchor is a local waterfront restaurant that can safely seat 300 people outside which makes us a prime destination for many Nova Scotians.

We have a great following by the local community and therefore would like to request a noise exemption for the long weekends so we can celebrate in partnership with other local companies and charities.

The events in question would be musical performances hosted on the property at 367 Bedford Hwy. We are fully licensed with NS Alcohol and Gaming(licensee #006687). Our hours of operation in the summer are 11-11 daily however, for the days in question, we would be quiet by 10pm.

We are asking for the following weekends to be listed under a noise exemptions permit between the hours of 11am-10pm.

May 21st- 24th (Victoria Day)

June 19th-21th (Fathers Day)

July 1st (Canada Day)

July 30th - August 2nd (Natal Day)

September 3rd-6th (Labour Day)

These long weekends are in the peak summer months and we would love to be able to put on events for the community and support local business and charity. The local charities we have supported in the past are:

Ecology Action Group

Phoenix youth Shelters

Feed Nova Scotia

All waste will be handled by us and removed under our normal schedule by ReGroup.

You can reach me anytime at [REDACTED] with any questions or concerns. I will also be the main point of contact for the weekends in question.

Thank you for your time,

-Michael Yould

Appendix B

Excerpt from By-Law N-200 Respecting Noise re: Grant of Exemptions by Council and Grant of Exemptions by Staff.

Grant of Exemptions By Council

6. (1) Notwithstanding anything contained in this By-Law, any person may make application to Council to be granted an exemption from any of the provisions of this By-Law with respect to any emission of noise for which that person might be prosecuted; and Council, by resolution, may refuse to grant any exemption or may grant the exemption applied for or any exemption of lesser effect; and 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 Council deems appropriate.

(2) In deciding whether or not to grant an exemption, Council shall give consideration to the social or commercial benefit of the proposed activity to the municipality, the views of any residents of the municipality which may be expressed to Council, the proposed hours of operation of the proposed noise-emitting activity and the proposed duration of the subject activity.

(3) In deciding whether or not to grant an exemption, Council shall give the applicant, and any person opposed to the application, an opportunity to be heard during a Council Session and may consider such other matters as it deems appropriate.

(4) Notice of the time, date and purpose of the Council Session at which the hearing is proposed to take place shall be mailed to the assessed owner or owners as shown in the records of the Regional Assessment Office, of property located within 100 feet of the property which will be the subject of the hearing;

(5) Any alleged breach by the applicant of any of the terms or conditions of any exemption granted by Council, shall be investigated by municipal staff, reported to Council in writing and Council shall determine whether or not a breach has taken place. If a breach has taken place, Council may pass a resolution revoking the exemption, without the necessity of giving notice of rescinding motion, and such exemption shall be null and void as of the passing of such resolution.

Grant of Exemptions by Staff

6A (1) Subject to section 6,

- (i) where a person makes an application for an exemption from the provisions of this By-law for a reoccurring event, and
- (ii) a previous application for an exemption from the provisions of this By-law for the event was approved by Council,

the exemption may be granted by the CAO.

(2) An exemption may be granted by the CAO where:

- (a) the date, time, location and duration are consistent with the previous application;

(b) the applicant states the social, economic and community benefit in their application;
and

(c) all other information contained in the application is substantively the same as the application approved by Council.

(3) The CAO may delegate the authority under subsections (1) and (2) to the staff that oversees the noise exemption application process.

Appendix C

