
Committee Members

Councillor M. Kalivas, Chair
Councillor J. Baker
Councillor D. Beatty
Councillor J. Earle
Mayor D. Henderson,
Ex-Officio

Areas of Responsibility

Economic Development
Planning
Chamber of Commerce
DBIA
Heritage Brockville

Museum Board
Library Board
Arts Centre
Tourism

Page

DISCLOSURE OF INTEREST

MOTION TO MOVE INTO CLOSED SESSION (5:15 PM)

1. THAT pursuant to Municipal Act, 2001, Section 239 Sub. 2 (c), Council resolve itself into the Committee of the Whole, In Camera, closed to the public to consider:

1. a proposed or pending acquisition or disposition of land by the municipality or local board.

REPORT OF THE COMMITTEE OF THE WHOLE IN CAMERA

1. THAT Council rise from Committee of the Whole, In Camera and the Chairman report that all recommendations adopted in Committee of the Whole, in Camera, be adopted.

STAFF REPORTS

1. 2011-089-09
Review of Noise By-law

2-18

Sept. 1, 2011

**REPORT TO THE ECONOMIC DEVELOPMENT PLANNING COMMITTEE –
SEPTEMBER 6, 2011**

**2011-089-09
REVIEW OF NOISE BY-LAW**

**M. PASCOE MERKLEY
DIRECTOR OF PLANNING
A. MCGINNIS
PLANNER II**

RECOMMENDED

THAT a revised by-law to regulate noise in the City of Brockville, attached to Report 2011-089-09 as Schedule "A", be received, and be referred back to staff for review by relevant Provincial ministries.

PURPOSE

To consider and receive a working draft of a revised Noise By-law, prepared in response to Council's direction.

BACKGROUND

At it's meeting of June 28, 2011, Council heard a presentation from Simon Fuller respecting the application of the City's Noise By-law to the Tall Ships Landing construction project, submitting a letter requesting exemption from specific aspects of the by-law. Under New Business, Council deliberated on the matter, and passed the following resolution:

"Noise By-law Exemption

Moved by: Councillor Beatty

THAT the Director of Planning be delegated to grant the exemption and return to the Council meeting of July 26, 2011 with a revised Noise By-law."

CARRIED

Staff updated Council on this initiative at it's meeting of July 26, 2011, with Council then directing the following:

***"Noise By-law Amendments
Memorandum dated July 20, 2011
Maureen Pascoe Merkley, Director of Planning***

Moved by: Councillor Baker

THAT the matter of the Noise By-law review and amendments be referred to the September meeting of the Economic Development and Planning Committee."

CARRIED

ANALYSIS

Overview of Current Noise By-law 138-80, as amended

Brockville's Noise By-law, being By-law 138-80, was first adopted in 1980. In and around that time, the Ministry of the Environment created a template for municipal by-laws to deal with issues of noise. The Noise By-law enacted by the City of Brockville was very much in line with that template.

The by-law has been the subject of three (3) different amendments since 1980.

The current consolidated version of the Noise By-law provides definitions relevant to the contents, general prohibitions, prohibitions by time and place particularly with reference to Quiet Zones and Residential Areas as defined in the by-law, exemptions for public safety reasons or for traditional, festive or religious activities, consideration of exemptions to the provisions of the by-law upon application made to Council, as well as general administration.

The Noise By-law is enforced by the City's municipal law enforcement officers as well as Brockville Police. Normally, police are called upon to enforce the by-law outside of normal business hours of the City.

Overview of Proposed Noise By-law

In conducting a review of the City's regulations respecting noise, staff examined background documents from Ministry of the Environment, and noise by-laws in effect in several other municipalities. City staff responsible for by-law enforcement from the Planning and Clerk's Departments and Brockville Police Service also provided input in the review of the current by-law.

It was the prevailing opinion of staff that, in large part, the current by-law serves its purpose well, but could be improved. And while it was the noise from construction at the Tall Ships Landing site that brought forward the review of the by-law, only a few modifications are recommended respecting construction noise.

A new Noise By-law is proposed for the City of Brockville. Since it is similar in many respects to the current by-law, the modifications proposed are highlighted in the draft by-law, attached to this report as Schedule "A".

Briefly, besides updating references to current legislation and adding some points of clarification, the changes proposed are as follows:

- The definition of construction equipment is broadened to include heaters, fans and boilers.
- Definitions of “dBA” (decibels) and “Persistent” are added.
- Administration of the by-law is noted as being the Planning Department’s responsibility.
- The Chief Planning Officer is delegated the authority to grant temporary exemptions to the by-law (example being the requests recently processed for easing of the restricted hours for construction noise associated with the Tall Ships Landing project).
- New general prohibitions are added respecting the operation of residential air conditioners, pool pumps or filters, heat pumps etc. that are not in proper working order, and respecting noise from the use of construction equipment which is not to disturb the inhabitants or exceed 85 dBA when measured at the point of reception.
- The process for applying for temporary exemptions is clarified, including the right to appeal the decision of the Chief Planning Officer to the appropriate standing committee of Council.
- Applications for exemption from other provisions of the by-law are directed to Council, and this process is clarified.

It is appropriate, once received by Council, to refer the draft by-law back to staff so that there can be consultation with Ministry of the Environment respecting the technical aspects of the proposed by-law. The Ministry of the Attorney General will also review the proposed by-law to determine whether the language is appropriate to meet short form wording guidelines for ease of enforcement.

POLICY IMPLICATIONS


Section 23.1 of the *Municipal Act*, 2001, as amended authorizes a municipality to delegate its powers and duties to a person or body, subject to some restrictions. The delegation of routine administrative matters, such as temporary exemptions to the Noise By-law, leaves Council to focus on policy and strategic decision-making.

FINANCIAL CONSIDERATIONS

The revised by-law proposes the establishment of fees for processing applications for exemption to the noise by-law, and for processing of appeals filed respecting decisions on applications filed for exemption. The fees will be established through the City’s User Fee By-law.

CONCLUSION

Upon review of the current noise by-law, staff believe that some revisions are warranted. A draft by-law has been prepared, and it is recommended that it be received and referred back to staff so that review by provincial Ministries of the Environment and Attorney General can be conducted.


A. McGinnis
Planner II
M. Pascoe Merkley
Director of Planning

B. Casselman
City Manager

City of Brockville

Ontario, Canada



A By-Law to Control Noise in the City of Brockville

By-Law No. ???-2011

Enacted by Council , 2011

THE CORPORATION OF THE CITY OF BROCKVILLE
BY-LAW NUMBER ???-2011

A BY-LAW TO CONTROL NOISE IN THE CITY OF BROCKVILLE
AND TO REPEAL BY-LAW 138-80

WHEREAS it is expedient to exercise the power conferred upon the Council by the most current Environmental Protection Act, as amended, and other statutory authority; and

WHEREAS a recognized body of scientific and technological knowledge exists by which sound may be substantially reduced; and

WHEREAS the people have a right to and should be ensured an environment free from unusual, unnecessary, or excessive sound which may degrade the quality and tranquility of their life or cause nuisance; and

WHEREAS it is the policy of the Council to reduce and control such sound;

NOW THEREFORE, the Council of the Corporation of the City of Brockville enacts as follows:

(a) Interpretation

(a) In this by-law,

(a) Construction

"construction" includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, moving, land clearing, earth moving, grading, excavating, the laying of pipe and conduit whether above or below ground level, street and highway building, concreting, equipment installation and alteration and the structural installation of construction components and materials in any form or for any purpose, and includes any work in connection therewith;

(b) Construction Equipment

"construction equipment" means any equipment or device designed and intended for use in construction or material handling, including but not limited to, air compressors, pile drivers, pneumatic or hydraulic tools, bulldozers, tractors, excavators, trenchers, cranes, derricks, loaders, scrapers, pavers, generators, heaters, fans, boilers, off-highways haulers or trucks, ditchers, compactors and rollers, pumps, concrete mixers, graders or other material handling equipment;

(c) Conveyance

"conveyance" includes a vehicle and any other device employed to transport a person or persons or goods from place to place but does not include any such device or vehicle if operated only within the premises of a person;

(d) Council

"Council" means the Council of the Corporation of the Municipality of Brockville;

- (e) dBA
"dBA" means the sound level in decibels obtained when using a sound level meter with the A-weighting;
- (f) Highway
"highway" includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle designed and intended for, or used by, the general public for the passage of vehicles;
- (f) Minister
"Minister" means Minister of the Environment;
- (g) Ministry
"Ministry" means Ministry of the Environment;
- (h) Motor Vehicle
"motor vehicle" includes an automobile, motorcycle, and any other vehicle propelled or driven otherwise than by muscular power; but does not include the cars of electric or steam railways, or other motor vehicles running only upon rails, or a motorized snow vehicle, traction engine, farm tractor, self-propelled implement of husbandry or road-building machine within the meaning of The Highway Traffic Act;
- (i) Motorized Conveyance
"motorized conveyance" means a conveyance propelled or driven otherwise than by muscular, gravitational or wind power;
- (j) Municipality
"municipality" means the land within the geographic limit of the Municipality of Brockville;
- (k) Noise
"noise" means unwanted sound;
- (l) Persistent
"persistent" means continuing to exist or endure over a prolonged period exceeding 15 minutes.
- (m) Point of Reception
"point of reception" means any point on the premises of a person where sound originating from other than those premises is received.

(2) Zones

In this by-law

- (a) Residential Area
"Residential Area" means those areas of the municipality specified as follows:

“residential area” means any area in the City of Brockville designated for residential use in any by-law in force from time to time passed pursuant to section 34 of the Planning Act, R.S.O. 1990, c.P.13, or any predecessor or successor of that section.

(b) Quiet Zone

“Quiet Zone” means those areas of the municipality specified as follows:
“quiet zone” means an area of the municipality so designated by Council in Appendix A of this by-law as a place where quiet is of a particular importance, such as, but not limited to, the immediate vicinity of a hospital.

(c) Agricultural Area

“Agricultural Area” means those areas of the municipality specified as follows:
“agricultural area” means any area in the City of Brockville designated for agricultural use in any by-law in force from time to time passed pursuant to section 34 of the Planning Act, R.S.O. 1990, c.P.13, or any predecessor or successor of that section.

2. ADMINISTRATION AND DELEGATION OF AUTHORITY

- (1) The Planning Department is responsible for the administration of this by-law.
- (2) All Peace Officers, Provincial Offences Officers and Municipal Law Enforcement Officers with the authority to enforce the by-laws of the Municipality are responsible for enforcing the provisions of this by-law.
- (3) The Chief Planning Officer or his/her designate is delegated the authority to grant temporary exemptions to this by-law.

3. GENERAL PROHIBITIONS

No person shall emit or cause or permit the emission of sound resulting from an act listed herein, and which sound is clearly audible at a point of reception:

- (1) Racing of any motorized conveyance other than in a racing event regulated by law.
- (2) The operation of a motor vehicle in such a way that the tires squeal.
- (3) The operation of a residential air conditioner, pool pump or filter, heat pump or the like that is not in proper working order and exceeds 50 dBA;
- (4) The operation of any combustion engine or pneumatic device without an effective exhaust or intake muffling device in good working order.

- (5) The operation of a vehicle or a vehicle with a trailer resulting in banging, clanking, squealing or other like sounds due to improperly secured load or equipment, or inadequate maintenance.
- (6) The operation of an engine or motor in, or on, any motor vehicle or item of attached auxiliary equipment for a continuous period exceeding five (5) minutes, while such vehicle is stationary in a Residential Area or a Quiet Zone unless:
 - (i) the original equipment manufacturer specifically recommends a longer idling period for normal and efficient operation of the motor vehicle in which case such recommended period shall not be exceeded; or,
 - (ii) operation of such engine or motor is essential to a basic function of the vehicle or equipment, including but not limited to, operation of ready-mixed concrete trucks, lift platforms and refuse compactors; or,
 - (iii) weather conditions justify the use of heating or refrigerating systems powered by the motor or engine for the safety and welfare of the operator, passengers or animals, or the preservation of perishable cargo, and the vehicle is stationary for purposes of delivery or loading; or,
 - (iv) prevailing low temperatures make longer idling periods necessary immediately after starting the motor or engine; or
 - (v) the idling is for the purpose of cleaning and flushing the radiator and associated circulation system for seasonal change of antifreeze, cleaning of the fuel system, carburetor or the like, when such work is performed other than for profit.
- (7) The operation of a motor vehicle horn or other warning device except where required or authorized by law or in accordance with good safety practices.
- (8) The operation of any item of construction equipment in a Quiet Zone or Residential Area without effective muffling devices in good working order.
- (9) Use of construction equipment shall not create noise likely to cause a nuisance or disturb the inhabitants or exceed 85 dBA when measured at the point of reception.

4. EXEMPTION

Public Safety

Notwithstanding any other provision of this by-law, it shall be lawful during an emergency to emit or cause or permit the emission of sound in connection with emergency measures undertaken:

- (a) for the immediate health, safety or welfare of the inhabitants or any of them: or,

- (b) for the preservation or restoration of property; unless such sound is clearly of a longer duration or nature more disturbing, than is reasonably necessary for the accomplishment of such emergency purpose.

5. GRANT OF EXEMPTION

(1) Application for Temporary Exemption (up to 6 months)

(1) Application

Notwithstanding anything contained in this by-law, any person may make application to the Chief Planning Officer to be granted an exemption from any of the provisions of this by-law.

The application shall be made in writing at least thirty (30) days prior to the event or activity and shall contain, at a minimum, the following information:

- a) the name and address of the applicant;
- b) the name and address of the organization represented by the applicant, if applicable;
- c) a description of the source of sound in respect of which the exemption is sought;
- d) a drawing of the proposed property showing the location of the noise source that is the subject of the exemption and the distance to the nearest residential use that may be effected;
- e) the particular provision or provisions of the by-law from which the exemption is sought;
- f) the period of time, of a duration not in excess of six (6) months, for which the exemption is sought;
- g) the location of the event or activity for which the exemption is sought;
- h) the reason why the exemption should be granted; and,
- i) the applicable fee as set out in the City's Fee By-law.

(2) Decision

In deciding whether to grant the exemption, the Chief Planning Officer or his/her designate may require that notification be given.

The Chief Planning Officer or his/her designate 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 (6) months, during which it is effective and may contain such terms and conditions as the Chief Planning Officer or his/her designate sees fit.

(3) Appeals

Where the Chief Planning Officer or his/her designate refuses to grant an exemption under this section, the Chief Planning Officer or his/her designate shall notify in writing, the applicant and any other person who had requested notification, advising them that they may appeal the decision within ten (10) days of the date of the notice.

This appeal shall be requested in writing accompanied by the applicable fee as set out in the City's Fee By-law to the City Clerk of the Corporation of the City of Brockville. The appropriate standing committee shall hold a hearing pursuant to the provisions of the Statutory Powers Procedure Act within thirty (30) working days of the City Clerk's receipt for a hearing.

Such committee may:

- (a) Issue an exemption;
- (b) Refuse to issue an exemption; or
- (c) Issue an exemption with conditions

The committees decision on the appeal is final.

(4) Appeal of Conditions of Approval

Where the Chief Planning Officer or his/her designate grants an exemption with conditions under this section, the Chief Planning Officer or his/her designate shall notify in writing, the applicant and any other person who had requested notification, advising them that they may appeal the decision within ten (10) days of the date of the notice.

This appeal shall be requested in writing accompanied by the applicable fee as set out in the City's Fee By-law to the City Clerk of the Corporation of the City of Brockville. The appropriate standing committee shall hold a hearing pursuant to the provisions of the Statutory Powers Procedure Act within thirty (30) working days of the City Clerk's receipt for a hearing.

Such committee may:

- (a) Dismiss the appeal;
- (b) Amend the conditions of approval; or
- (c) Withdraw the approval and refuse the exemption;

The committees decision on the appeal is final.

(5) Breach

Breach by the applicant of any of the terms or conditions of any exemption granted shall render the exemption null and void.

(2) Application for Exemption (greater than 6 months)

(1) Application

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.

The application shall be made in writing at least sixty (60) days prior to the event or activity and shall contain, at a minimum, the following information:

- a) the name and address of the applicant;
- b) the name and address of the organization represented by the applicant, if applicable;
- c) a description of the source of sound in respect of which the exemption is sought;
- d) a drawing of the proposed property showing the location of the noise source that is the subject of the exemption and the distance to the nearest residential use that may be effected;
- e) the particular provision or provisions of the by-law from which the exemption is sought;
- f) the period of time for which the exemption is sought;
- g) the location of the event or activity for which the exemption is sought;
- h) the reason why the exemption should be granted; and,
- i) the applicable fee as set out in the City's Fee By-law.

(2) Decision

In deciding whether to grant the exemption, notification is to be given to persons within 120.0 metres (393.0 feet) in order to provide those persons in support or opposed to the application an opportunity to be heard and may consider such other matters as Council sees fit.

Council 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 during which it is effective and may contain such terms and conditions as Council sees fit.

Council's decision to issue an exemption, refuse to issue an exemption or to set terms and conditions for the exemption is final.

(3) Breach

Breach by the applicant of any of the terms or conditions of any exemption granted shall render the exemption null and void.

6. EXEMPTION OF TRADITIONAL, FESTIVE OR RELIGIOUS ACTIVITIES

Notwithstanding any other provision of this by-law, this by-law does not apply to a person who emits or causes or permits the emission of sound in connection with any of the listed traditional, festive, religious and other activities.

- (1) Festivities in connection with statutory holidays.
- (2) Official City festivities or festivities authorized by the City.
- (3) The use of bells or chimes normally associated with municipal or church activities.
- (4) The collection of Municipal garbage and refuse by or on behalf of the City of Brockville.
- (5) The plowing and removal of snow by or on behalf of the City of Brockville.
- (6) The sanding and salting of roads and sidewalks by or on behalf of the City of Brockville.
- (7) The sweeping of streets by or on behalf of the City of Brockville.
- (8) Any road and sewer maintenance activities by, or on behalf of, the City of Brockville.

7. PROHIBITIONS BY TIME AND PLACE

No person shall emit or cause or permit the emission of sound resulting from any act listed in Table 1 if clearly audible at a point of reception located in an area of the municipality indicated within a prohibited time shown for such an area.

8. SEVERABILITY

If a court of competent jurisdiction should declare any section or part of a section of this by-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of the by-law and it is hereby declared that the remainder of the by-law shall be valid and shall remain in force.

9. OFFENCE AND PENALTY PROVISIONS

Any person who contravenes and provision of this By-law is guilty of an offence and, upon conviction, is subject to a fine as provided in the *Provincial Offences Act*, as amended, and to any other applicable penalties.

10. SITE SPECIFIC EXEMPTIONS

- 1) That Black & Decker Canada Inc. be granted relief to this by-law with respect to snow plowing at the location known municipally as 100 Central Avenue, Brockville.

Table 1
PROHIBITIONS BY TIME AND PLACE

	Prohibited period of Time	
	<u>Quiet Zone</u>	<u>Residential Area</u>
1. The detonation of fireworks or explosive devices not used in construction.	At all times	At all times
2. The discharge of firearms.	At all times	At all times
3. The operation of a combustion engine which, (i) is, or (ii) is used in, or (iii) is intended for use in, a toy, or a model or replica of any device, which model or replica has no function other than amusement and which is not a conveyance.	At all times	At all times
4. The operation of any electronic device or group of connected electronic devices incorporating one or more loudspeakers or other electro-mechanical transducers, and intended for the production, reproduction or amplification of sound which may include music.	At all times	B
5. The operation of any auditory signalling device, including but not limited to the ringing of bells or gongs and the blowing of horns or sirens or whistles, or the production, reproduction or amplification of any similar sounds by electronic means, except where required or authorized by law or in accordance with good safety practices.	At all times	D & E
6. The operation of any powered rail car including but not limited to refrigeration cars, locomotives or self-propelled passenger cars, while stationary on property not owned or controlled by a railway governed by the Canada Railway Act.	At all times	B
7. The operation of any motorized conveyance other than on a highway or other place intended for its operation.	At all times	B
8. The venting, release or pressure relief of air, steam or other gaseous material, product or	At all times	A

	Prohibited period of Time	
	<u>Quiet Zone</u>	<u>Residential Area</u>
compound from any autoclave, boiler, pressure vessel, pipe, valve, machine, device or system.		
9. Persistent barking, calling or whining or other similar persistent noise making by any domestic pet.	At all times	A
10. The operation of a commercial car wash with air drying equipment.	At all times	D & E
11. Yelling, shouting, hooting, whistling, or singing.	At all times	A
12. The operation of a power assisted hang glider or parafoil.	At all times	D & E
13. The operation of any item of snow making equipment.	At all times	E
14. All selling or advertising by shouting or outcry or amplified sound.	At all times	D & E
15. Loading, unloading, delivering, packing, unpacking, or otherwise handling any containers, products, materials, or refuse, whatsoever, unless necessary for the maintenance of essential services or the moving of private household effects.	D & E	D & E
16. The operation of any equipment in connection with construction.	D & E	D & E
17. The operation or use of any tool for domestic purposes other than snow removal.	C	B
18. The operation of a commercial car wash of a type other than mentioned in item 10.	C	A

Suggested Restricted Times:

- A 23:00 one day to 07:00 next day (09:00 Sundays)
- B 21:00 one day to 07:00 next day (09:00 Sundays)
- C 17:00 one day to 07:00 next day (09:00 Sundays)
- D All day Sundays and Statutory Holidays
- E 19:00 one day to 07:00 next day.

**GIVEN UNDER THE SEAL OF THE CORPORATION OF THE
CITY OF BROCKVILLE AND PASSED
THIS DAY OF , A.D., 2011**

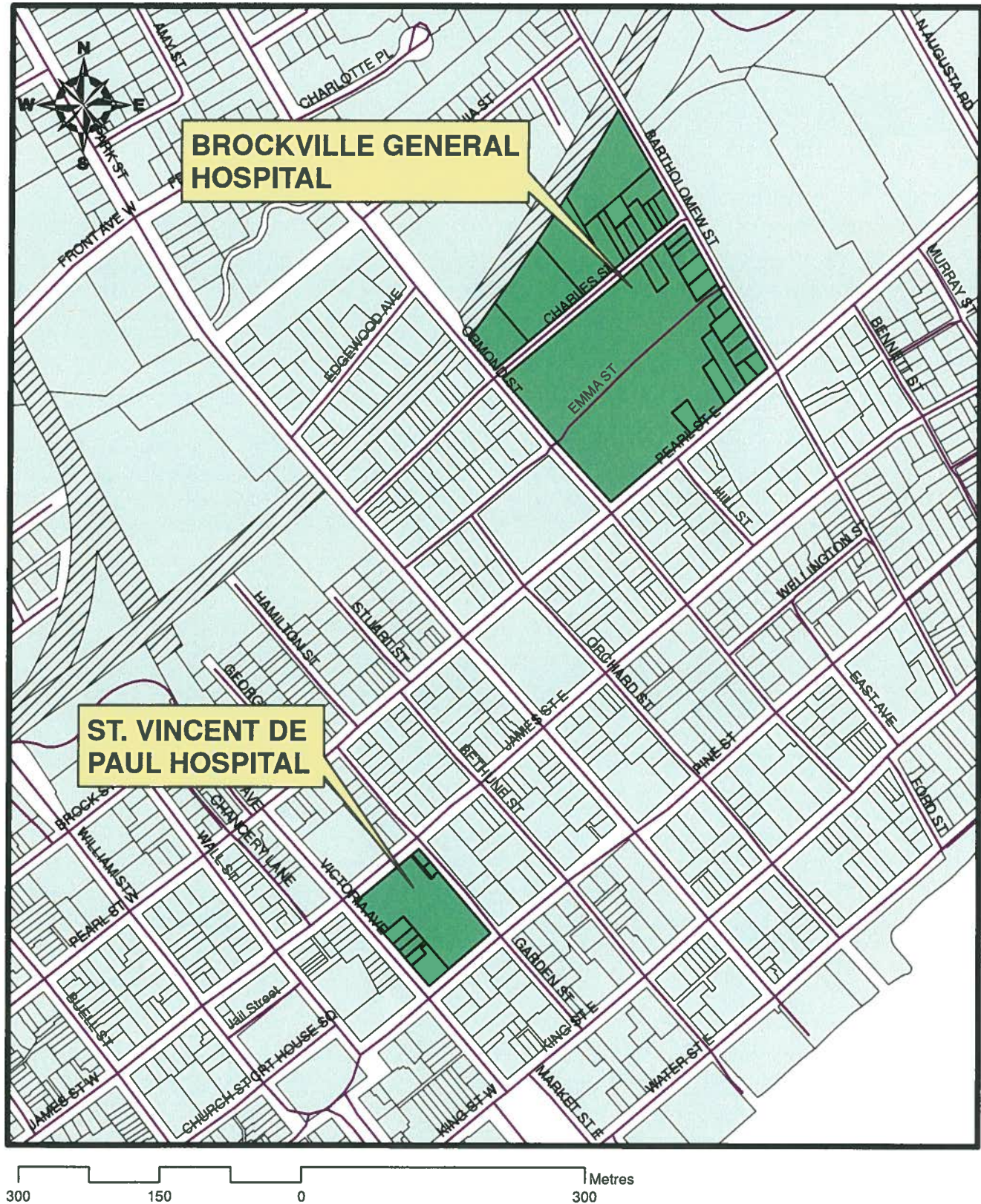
MAYOR

CLERK

This By-law is approved pursuant to the provision of the
Environmental Protection Act, as amended, at Toronto, this
day of , 2011.

APPENDIX A

CITY OF BROCKVILLE NOISE BY-LAW ???-2011



Based on TERANET Information