



CITY OF KINGSTON
REPORT TO COUNCIL

Report No.: 10-253

TO: Mayor and Members of Council
FROM: Terry Willing, Acting Commissioner, Community Services
RESOURCE STAFF: Kim Leonard, Acting Director, Building & Licensing
DATE OF MEETING: July 20, 2010
SUBJECT: Bonnechere Excavating Inc. – Application for Noise Exemption – Highway 401 Reconstruction

EXECUTIVE SUMMARY:

At its regular meeting held on June 3, 2008, Council approved an application made by the Ministry of Transportation for an exemption to the noise control by-law to allow for improvements to Highway 401 from west of Sydenham Road to west of Montreal Street, beginning Wednesday, July 2, 2008 until Wednesday, October 31, 2012, between the hours of 7:00 p.m. and 7:00 a.m., Sunday to Friday, but not on any Statutory holiday.

The Council resolution did not restrict any type of construction activity during the exemption period; however, the report attached as Exhibit A did communicate specific types of construction activities that would not be performed after 7:00 p.m. and before 7:00 a.m. Bonnechere Excavating Inc. is seeking a noise exemption to allow for cement chiselling beneath the Sydenham Road underpass from 7:00 p.m. to 7:00 a.m. for ten days between Wednesday, July 21st, 2010 and Friday, August 13, 2010. The contractor has requested a maximum exemption of 10 days over a 24 day period as it cannot be confirmed whether construction will begin on July 21st or within 10 days after that date.

RECOMMENDATION:

THAT Bonnechere Excavating Inc. be granted an exemption from the normal regulations under Schedule B of By-Law No. 2004-52, "A By-Law To Regulate Noise", in order to allow for cement chipping and replacement of cement under the Sydenham Road underpass from 7:00 p.m. to 7:00 a.m. Wednesday, July 21st, 2010 to Friday, August 13, 2010, but not on any Sunday or Statutory Holiday.

THAT this activity be permitted only for 10 days during the exemption period and that Bonnechere Excavating Inc. provides the Manager, Licensing and Enforcement Division, 48 hours notice before the project begins.

AUTHORIZING SIGNATURES:

ORIGINAL SIGNED BY COMMISSIONER Terry Willing, Acting Commissioner, Community Services
ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER Gerard Hunt, Chief Administrative Officer

CONSULTATION WITH THE FOLLOWING COMMISSIONERS:

Cynthia Beach, <i>Sustainability & Growth</i>	n/r
Denis Leger, <i>Transportation, Properties & Emergency Services</i>	n/r
Jim Keech, <i>President and CEO, Utilities Kingston</i>	n/r

(N/R indicates consultation not required)

OPTIONS/DISCUSSION:

On June 3, 2008 Council resolved:

THAT the Ministry of Transportation be allowed an exemption from the normal 19:00 (7 p.m.) to 07:00 (7 a.m.) restriction under the City of Kingston Noise Control By-Law No. 2004-52 Schedule B, in order to allow for Highway 401 Improvements to occur from west of Sydenham Road to west of Montreal Street from Wednesday, July 2, 2008, and to continue until Wednesday, October 31, 2012, between the hours of 7:00 p.m. and 7:00 a.m. Sunday to Friday, but not on any Statutory holiday;

- and further -

THAT the noise by-law exemption be conditional on staff, in conjunction with the MTO and the District Councillor, coming up with a method of communication to inform the residents at least three weeks prior to the work commencing within the hours of 7:00 p.m. ;

- and further -

THAT the MTO submit a proposed plan or schedule of the work to happen within the Division Street to Montreal Street area between 7:00 p.m. and 7:00 a.m.

The report that was submitted to Council requesting the initial exemption for the Ministry of Transportation included the following information in the options and discussions:

"The construction activities will consist of standard construction methods. No blasting is anticipated. The Contractor will not be undertaking construction activities such as hoe ramming, chip hammers, pipe ramming, saw cutting, jack hammers and any like equipment will be restricted from 7pm to 7am.

The Ministry of Transportation has limited the number of hours during the day that the contractor can close the 401 down to one lane of traffic in order to allow for work to be completed under the overpass. The restrictions are due to high volumes of traffic and concerns for traffic congestion and therefore the work cannot be completed as projected. Bonnechere Excavating Inc. is requesting this exemption to allow them to remove 4" of corroded concrete under the Sydenham Road overpass bridge when traffic volumes are reduced. A 9 kg. chipping hammer will be used to remove the corroded concrete and then the concrete will be replaced with fresh mix. The chipping hammer will not make any more noise than is currently created with transport traffic passing under the overpass. The contractor has requested a maximum exemption of 10 days over a 24 day period as it cannot be confirmed whether construction will begin on July 21st or within 10 days after that date.

Bonnechere's contract with the Ministry of Transportation allows for the contractor to make application for exemptions to the noise control by-law.

The June 3, 2008 resolution does not specifically prohibit any type of construction; however, staff felt it necessary to come back to council with this request given that the information provided in the report indicated that there would be no chip hammers used during the construction period. Staff have confirmed that there are no outstanding noise complaints resulting from the June 20, 2008 resolution.

A representative from Bonnechere Excavating Inc. will be available to take calls during the proposed exemption period if necessary. Contact information can be obtained through Kim Leonard, Manager, Building & Licensing.

EXISTING POLICY/BY LAW:

By-Law 2004-52, being A By-Law to Regulate Noise in the City of Kingston, Schedule B prohibits noise from construction activities from 7:00 p.m. to 7:00 a.m. Monday to Saturday and all day Sunday and Statutory Holidays.

NOTICE PROVISIONS:

Council has granted exemptions to the Noise Control By-Law for this type of construction activity in the past, and the authority to do so is specifically granted to Council under Subsection 129 (3) of the *Municipal Act*, which does not require public notification.

It has been a practice for staff to require advertisement of applications for exemptions for construction work. Advertisement of the construction allows staff to make their recommendation to council with knowledge of the impacts that the construction may have on the surrounding neighbours. The noise exemption request for this construction has not been advertised as time would not allow for public consultation. However, as part of the initial request for noise exemption the MTO did do extensive public consultation and there were no objections received. The city also advertised the construction and there were no objections received as part of that public consultation.

ACCESSIBILITY CONSIDERATIONS:

N/A

FINANCIAL CONSIDERATIONS:

A \$100.00 fee was received to help cover the cost of processing noise exemption requests. There are no other financial considerations.

CONTACTS:

Kim Leonard, Acting Director, Building & Licensing

613-546-4291 ext. 3222

Greg McLean, Supervisor, Animal Control & By-Law Enforcement

613-546-4291 ext. 1336

OTHER CITY OF KINGSTON STAFF CONSULTED:

Brian Fleming, Kingston City Police

EXHIBITS ATTACHED: N/A