

LETTER TO NOISE COMPLAINANT (Table 3-1 noise)

Dear _____

This letter will acknowledge receipt of your noise complaint dated _____. Please be advised that I have written to the individual or business you have identified as being the source of the noise in an attempt to provide education on the City of Windsor's Emission of Sounds by-law. It is hoped that voluntary compliance with the by-law can be obtained through education.

In the event that voluntary compliance cannot be achieved, please provide me with details about the noise you are experiencing by completing the following enclosed forms:

1. Noise Complaint Diary Form; and
2. Noise Complaints and Witness Questionnaire.

It is very important that you supply all information requested on the forms in as much detail as possible.

It is also important for you to capture an audio or video record(s) of the noise you are experiencing. Please provide details such as the date and time of the recording, where the recording was made, how you were able to determine where the noise originated from, the duration of the noise, etc.

Please return the completed forms and recording(s) to me for review so I can consider whether a possible violation of the by-law has occurred. It may be necessary for me to follow up with you for further information or clarification or to obtain a formal statement from you. My investigation may also involve canvassing your neighbours to determine whether they are also experiencing a noise issue.

After review of all of the above documentation, I will consider whether there are reasonable and probable grounds to believe that the person or business has committed an offence under the by-law. This will require an assessment of the documentation that has been submitted.

If I determine that reasonable and probable grounds are lacking, I will not proceed with a charge against the individual or business identified by you. You, however, have the option of pursuing your own private prosecution against the business or individual. You may wish to seek legal advice if you decide to proceed in this manner.

If I determine that reasonable and probable grounds exist, the individual or business will be charged and a prosecution file will be prepared for the prosecutor. The prosecutor will review the documentation and determine whether there is a reasonable prospect of conviction on the standard of proof beyond a reasonable doubt. If a reasonable prospect of conviction does not exist, the prosecutor will withdraw the charge in court.

If the prosecutor determines that a reasonable prospect of conviction exists, the prosecution will continue and you will be served with a Summons to Witness in the event that the individual or business requests a trial. Your attendance at trial is required as well as your oral testimony in court. In the event that the individual or business is found guilty and a fine imposed, all fine proceeds are payable to the City of Windsor. You will not receive any compensation through the prosecution process. You may wish to seek independent legal advice concerning any civil remedies that may be available to you.

What follows below is a brief procedural summary. It is not meant to be exhaustive but rather give you a brief overview of the typical court process.

PROCEDURAL SUMMARY

1. Upon receipt and review of the Noise Complaint Diary Form, Noise Complaints and Witness Questionnaire and any other additional information submitted, the By-law Enforcement Officer will determine whether there are reasonable and probable grounds to believe that an offence has been committed. The By-law Enforcement Officer will advise you whether the individual or business you have identified will be charged with an offence under the Emission of Sounds by-law.

If it is determined that the individual or business will be charged, the following steps typically occur:

2. The By-law Enforcement Officer will prepare an Information and a Summons setting out certain particulars such as the charged party's name (the Defendant), offence location, offence date, description of the offence, the by-law number and specific section contravened, and the date/time/location of the First Appearance (the first court date).
3. The By-law Enforcement Officer will attend before a Justice of the Peace to swear to the contents set out in the Information and Summons.
4. The By-law Enforcement Officer will arrange to have the Summons served on the Defendant.
5. The Defendant is required to attend court on the First Appearance date or send an agent or legal representative in his/her place.
6. Typically there will be several adjournments before the charge is finally dealt with in court. Adjournments are normally granted to allow the Defendant to obtain and review disclosure, to retain legal counsel, for legal counsel to meet with the prosecutor in an attempt to resolve the charge, for legal counsel to obtain instructions from the Defendant, etc.
7. If the Defendant decides to plead guilty to the charge, your attendance will not be required in court.
8. If the Defendant decides to dispute the charge, a trial date will be scheduled. You will be served with a Summons to Witness that compels your attendance in court on the trial date. You will be required to testify under oath or solemn affirmation about the noise you have experienced. You will also be subject to cross-examination by the Defendant or his/her agent or legal representative.
9. The Justice of the Peace who presides over the trial will determine whether the offence has been proven on the standard of proof beyond a reasonable doubt. If the individual or business is found guilty a fine is typically imposed but the Justice of the Peace can waive the fine in appropriate circumstances (i.e. after taking into consideration the Defendant's ability to pay).

Should you have any questions or concerns please contact me directly.

Officers Name (Print): _____

By-law Enforcement Officer _____

519-255-6100 ext _____

RFS# _____



Noise Complaints and Witness Questionnaire

Name: _____

Address: _____

Telephone Number: _____

Address of Complaint: _____

The following questions must be answered in order to assist in the Prosecution of a Noise By-Law. Corroborating witnesses must also complete this questionnaire.

a) Number of years occupying this residence: _____

b) Number of years offending party occupying residence: _____

c) Normal work hours and type of employment: _____

d) Proximity of residence to where noise is emanating from: _____

e) How long has the noise been a concern? _____

f) What attempts, if any, have you taken to advise the person making the noise of your concerns and what was result?

g) Describe how the noise affects your quality of life and what changes have you made to mitigate the effects?

h) How do you know where the Noise is emanating from?

Should charges be laid for violations of the City of Windsor Noise By-Law the undersigned is prepared to appear in Court as a witness and provide evidence as shown in the Noise Diary.

Signature: _____ Date: _____

