



February 22, 2021

Mayor and Vancouver City Council:

Mayor Kennedy Stewart
City Councillor Rebecca Bligh
City Councillor Christine Boyle
City Councillor Adriane Carr
City Councillor Melissa De Genova
City Councillor Lisa Dominato
City Councillor Pete Fry
City Councillor Colleen Hardwick
City Councillor Sarah Kirby-Yung
City Councillor Jean Swanson
City Councillor Michael Wiebe

Regarding: Enhanced Enforcement of Amplification Devices

I am writing to you on behalf of the British Columbia Civil Liberties Association (“BCCLA”) to urge Vancouver City Council not to adopt the recommendations contained in the February 2, 2021 [report](#) on Enhanced Enforcement of Amplification Devices by the Chief License Inspector, the General Manager of Engineering Services, and the Vancouver Police Department.

We vehemently condemn anti-LGBTQ2S+ violence. However, the recommendations in this report are extremely overbroad and ill-defined, with a scope including a prohibition on all devices amplifying voice and musical instruments and with accompanying enforcement including a fine and seizure of property. The three recommendations can be summarized as:

1. Amendment of the Noise Control By-law to prohibit use of devices to amplify voice and musical instruments on public property without permission and where the noise or sound is objectionable or liable to disturb the quiet, peace, rest, enjoyment, comfort, or convenience of individuals or the public,
2. Amendment of the Ticket Offences By-law to establish an offence enforceable by MTI with an associated fine of \$250, for violation of the Noise Control By-law prohibition against use of devices to amplify voice and musical instruments on public property without permission and,
3. Amendment of the Street & Traffic By-law to prohibit placement of sound amplification devices on public property without permission, thereby enabling seizure of such devices under the existing authority of the Impounding By-law.

It is our submission that these recommendations, if enacted, would have the effect of unreasonably infringing on the constitutional protection of freedom of expression. We are also troubled that only the VPD was consulted and no public consultation took place.



Section 2(b) of the *Charter of Rights and Freedoms* holds that everyone has the following fundamental freedoms: freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication. The three core values underlying the protection of freedom of expression are the enhancement of individual self-fulfillment, democratic discourse, and the search for truth.¹ The Supreme Court of Canada has held the Charter-protected right to freedom of expression is closely connected to and “perhaps the linchpin” to the political process and democratic governance. As a result, Canadian courts interpret Charter section 2 freedoms generously and take government infringements of these freedoms seriously.

The freedom to join together with those who share our beliefs is vital, especially for marginalized communities. Acting collectively is key to challenging unjust government laws, including through protests and gatherings in public space using amplification devices like megaphones and sound systems and often disturbing the convenience of the public by taking over sidewalks and streets. One City Councillor has suggested in the media² that these bylaws allow for discretion and would only be selectively enforced. However, these amendments are overly broad and there is nothing in the drafted amendments that suggests a limited scope. In fact, quite the opposite: these amendments propose a complete ban on voice and noise amplification devices in public space without permission and on the ill-defined grounds of the noise being ‘objectionable’ or where it ‘disturbs public comfort or convenience.’ A person is not allowed to even *place*, let alone not use, an amplification device on a street without permission.

The law is a blunt instrument and not a scalpel. Even if the intent is not to enforce the bylaws against most political protests, the overbroad scope of the amendments will create a chilling effect where people—especially those already targeted by state violence—will hesitate to plan gatherings out of fear of being fined or having their property seized by the City. Justin Morissette and Imtiaz Popat have expressed similar concerns in interviews.³ These noise bylaw amendments are not minimally impairing nor proportionate and, though content-neutral, would likely, in effect, unreasonably hinder highly-protected expressive activity that promotes all the core rationales underlying freedom of expression.⁴ We urge you not to accept these recommendations.

Sincerely,


Harsha Walia, Executive Director

¹ *R. v. Keegstra*, [1990] 3 S.C.R. 697; *Thomson Newspapers Co. v. Canada (A.G.)*, [1998] 1 S.C.R. 877; *Harper v. Canada (Attorney General)*, [2004] 1 S.C.R. 827; *Montréal (City) v. 2952-1366 Québec Inc.*, [2005] S.C.J. No. 63, [2005] 3 S.C.R. 141.

² News 1130, Vancouver looks to turn down volume on hate speech from street preachers, Feb 20, 2021: <https://www.citynews1130.com/2021/02/20/noise-complaint-by-law-changes-hate-speech/>

³ News 1130, Vancouver man assaulted by anti-gay street preachers supports noise bylaw change -- with one caveat, Feb 21, 2020; <https://www.citynews1130.com/2021/02/21/vancouver-noise-by-law-anti-gay-street-preachers/>; CBC News, Vancouver to update noise bylaw in response to anti-gay preachers in West End, February 20, 2021, <https://www.cbc.ca/news/canada/british-columbia/vancouver-to-update-noise-by-law-in-response-to-anti-gay-preachers-in-west-end-1.5920550>

⁴ Kent Roach and David Schneiderman, “Freedom of Expression in Canada,” *Supreme Court Law Review* (2013), 61 S.C.L.R. (2d)