

PROPOSED NUISANCE BYLAW - CITY OF LONDON

PURSUANT TO A PUBLIC MEETING TO BE HELD ON APRIL 2, 2012

COMMENTARY

BY

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I won't attempt to comment on the CONSTITUTIONALITY of this proposed bylaw beyond saying as the author of the proposed nuisance bylaw said it is questionable and likely will be litigated and I agree.

There are, however, two other legal questions that I think you should consider. Firstly, if the bylaw is enforced the enforcers (police, municipal officials or whoever) can NOT enter the dwelling so it appears that all the party-goers have to do is enter the dwelling and come back out when the enforcers have left.

Secondly, the powers of arrest don't run with this bylaw. In other words, the party-goers are ONLY to be given a ticket. I somehow find this approach to be ludicrous when dealing with drug-soaked alcohol-fueled sub-human scum. You might as well ADDITIONALLY order the police to dress in pink uniforms instead of navy blue uniforms while they are trying to do this proposed, ridiculous job.

The greatest concern I have, however, regards the logistics of what this bylaw is proposing in that we don't have enough police or bylaw enforcers to even come close to enforcing this bylaw so my greatest fear is that this will just be another sad chapter in London's failed bylaw enforcement.

I personally have tried many times to have wild parties shut down in my neighborhood and found that on Friday and Saturday night it takes 4 to 6 hours for police to respond and the latest thing that is happening is that when I call 911 I am told to call the police at their regular 7 digit number where I get a tape recorded message that tells me to leave a brief description of the problem whereupon someone will look into it. Most of the time no one responds and I assume that it is because the police are tied up on more important things like bar fights, stabbings, attempted murders, serious car accidents (very often involving drunk drivers) and so forth.

Hence, the idea of trying to nip these wild parties in the bud with this bylaw so that they cannot easily turn into what happened on St. Patrick's Day reminds me of what the great German General Erwin Rommel would tell Adolph Hitler:

"The greatest strategy in the world is useless if it can not be implemented."

In short, we don't need another bylaw that won't get enforced. So forget it.

What then should we do? It is my opinion that we have to come up with strategies that ARE implementable and I understand that this April 2, 2012 public meeting is being partly held to get some alternative ideas and if you will bear with me I would like to offer several:

(1) IMPOSE A CODE OF CONDUCT on all UWO and Fanshawe College students. From press reports it appears that about two-thirds of those arrested in the St. Patrick's Day riot were students at Fanshawe College.

The Code of Conduct would be imposed through business licensing. The Municipal Act gives a municipality the power to license virtually any business. Hence, the city of London should declare UWO and Fanshawe College to be businesses hereinafter regulated by the city of London whereby all students, at the time of enrollment, will collaterally agree to a Code of Conduct AND also the consequences of breaking that Code.

If any student is convicted of breaking:

- any bylaw of any community anywhere in the world,
- any provincial law or state law (with the exception of any Highway Traffic Act) anywhere in the world, or
- any federal law anywhere in the world

the student will be expelled from the school for 2 years FROM THE DAY THE OFFENSE OCCURRED and will summarily lose all credits and degrees obtained during this 2 year period. And there will be no exceptions -- ever. So, a student who has committed an offense somewhere can not delay the court action to simply obtain the degree or graduate the course -- a delay like this won't work because the credit(s), degree(s) and/or graduation will be withdrawn.

For those who think that the Code of Conduct I am proposing is too tough, I would like to remind this person that if the Riot Act had been read at the St. Patrick's Day riot all persons in the crowd who did not disperse would be facing a potential punishment of LIFE IN PRISON and not just

a two year expulsion from a school of learning.

It must never be forgotten, however, that the enforcement of a Code of Conduct begins with a police department having the person power to investigate complaints and, where appropriate, lay charges which will result in convictions in a court of law.

(2) DECLARE ANY BAR that earns more than 20 PERCENT of its revenue FROM THE SALE OF ALCOHOLIC BEVERAGES to be a PUBLIC NUISANCE unless they adopt a SCIENTIFIC METHOD to determine if a patron is already intoxicated or is likely to become intoxicated if they are served. The bar must breathalize the potential customer and if the potential customer registers above .05 on the breathalizer they can NOT be served and when they are served they can only be served one normal size glass of alcohol before being required to be breathalized again before being served another alcoholic drink and so on.

I will mention here that a bar can NOT be regulated or licensed by a municipality according to the Municipal Act but recent court rulings have made it clear that a PUBLIC NUISANCE is ANYTHING that a municipality thinks it is and the Municipal Act permits a municipality to petition the Court to shut down a public nuisance for up to two years.

The reason we have to get control of these bars which routinely serve the vast majority of their customers to the point of and beyond intoxication is because police departments (and I include London among them) have unsuccessfully petitioned the provincial government to NOT have the uniform hour of 2 am for bars to close because it creates havoc on the resources of police departments when these drunken patrons are all told to leave at the same time throughout the entire community. I suspect that this is the reason why we could only divert 50 police officers to the St. Patrick's Day riot because most of the balance of the force was dealing with all the drunks leaving the bars.

(3) The actions of our police department actually made the St. Patrick's Day riot worse in that when the crowd of drunken, drug-soaked hooligans realized that the police were trying to enforce the law from a POSITION OF WEAKNESS (as demonstrated when the police had to retreat) instead of a POSITION OF STRENGTH, it was tantamount to the police taking a megaphone and telling the crowd that they could do anything they wanted which is exactly what the crowd then did and that's when it really turned ugly.

What should the police have done? It seems to me that the police officer in charge should have known they were greatly out-numbered and, therefore, he or she should have called the Ontario Provincial Police and asked for help. The

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request should have been for at least 250 OPP officers in full riot gear to join the 50 London police officers in 1 hour -- a request that was totally possible to fulfill according to an ex-OPP officer that is a personal friend of mine.

One-half hour before the entire strike force of 300 police officers was to be assembled near the site of the riot, the RIOT ACT should have been read by the Mayor, Deputy Mayor, Sheriff, or Deputy Sheriff, who should have been ordered to the scene by the police officer in charge.

The reason for elevating the situation to the level of the RIOT ACT is because the penalty for not dispersing within 30 minutes of the reading of the RIOT ACT is a potential life in prison. In other words, failing to disperse is a felony with a potential penalty that is the equivalent of the death penalty in Canada and no federal government has ever seen fit to amend this penalty whereas, on the other hand, a charge of unlawful assembly only carries the SUMMARY PENALTY of a maximum of 2 years in prison.

For the members of the crowd who did not disperse by the end of the 30 minute time period, the 300 police officers in full riot gear should have then encircled the crowd whereupon the police officer in charge should have used a megaphone to tell the crowd that they were all under arrest and that they would be pre-processed one at a time through a designated space in the circle and that anyone who attempted to otherwise leave the circle would be stopped and that ANY appropriate force would be used to keep them inside of the circle until all of them had been pre-processed.

As each person was arrested, checked for weapons and read their rights each person would then be placed in a patty wagon and transported to a large and secure holding area where they would be kept until final processing could occur.

As the circle got smaller the fire department should have been called in to begin putting out the fires.

As a point of interest we are very lucky that the television truck that was turned over by the crowd and set on fire must of had a mostly full tank of gas because one gallon of gasoline vapor is equivalent to 88 sticks of dynamite whereas liquid gasoline is not very volatile. We are just incredibly lucky that a tragedy of monumental proportions did not occur with an explosion having the force of 1500 to 1700 sticks of dynamite killing and maiming hundreds of innocent people -- which would have been shown to the entire world via the internet.

Looking at one additional point regarding law enforcement: Should the city of London acquire a WATER

CANON? Such devices are quite effective in crowd control but are also very expensive unless some other use can be found in conjunction with fire fighting. So, unless we were going to get one anyway to fight fires I don't think we should go looking for one if it only has one use, that being for crowd control. It's too expensive to have this thing sitting around doing nothing while waiting for another riot.

(4) The city of London has to STOP BREAKING THE LAW and begin to LEAD BY EXAMPLE and to here I refer to the Windfields case which is mentioned in the packet of information I was given at the City Clerk's office at City Hall regarding the proposed Nuisance Bylaw.

Most people don't know what Mr. Justice Howden said in the Windfields decision and how it impacts what the city of London has done via Landlord Licensing.

Mr. Justice Howden said, by deduction, that more than TWO STUDENTS living in a "family" zoned dwelling in a rental contract lasting up to 1 year do NOT constitute a "family" pursuant to a municipality's Zoning Act. Rather they constitute the occupants of a rooming house or lodging house and unless their dwelling has the zoning of rooming house or lodging house their occupation of that dwelling is illegal.

Mr. Justice Howden's decision in the Windfields case was upheld by the Appeal Court of Ontario on March 31, 2009 and leave to appeal to the Supreme Court of Canada was refused on November 20, 2009 making Mr. Justice Howden's decision the law for Ontario but not all of Canada.

I contend that, via Landlord Licensing, the city of London has licensed the very dwellings that Mr. Justice Howden said were illegal and I further contend that the city of London can't legally do that. The rationale I am using parallels the same logic that tells me that the city of London can't legally license a marijuana grow house in order to make that legal. The Case Law is clear in Chippawas of Saugeen First Nation et. al. v. Township of Keppel (1994) which is an Ontario case (and therefore is binding in Ontario) where the Court said that a municipality can NOT use any bylaw to skirt a decision of the Court.

My point then is this: Before the City starts telling everyone else to obey the law, the City should start obeying the law itself!

(5) The next logical question, it seems to me, is "Where are all these students supposed to live if they can't live in "family" zoned dwellings in groups greater than two?" The only thing that makes sense to me is that we must masterplan various tracks of land which are in close proximity to both UWO and Fanshawe College to accommodate clusters of high-rise

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2-bedroom apartments which will be purpose-built for students. These high-rise apartments would be built and managed by reputable developers in what I envision to be a Student Village atmosphere most likely constructed on or very close to arterial roads.

What is it that will make a Student Village concept work where everything else has failed? And to this failure I include Landlord Licensing which did not stop or even remotely hinder the St. Patrick's Day riot.

There are 2 key ingredients which will make the concept of Student Villages work:

- (1) The mandatory Code of Conduct (which I discussed above), and
- (2) The nature of how the developers of these high-rise apartment buildings will manage these buildings specifically for students in that the PARENT of each student is the TENANT and the student is the OCCUPANT. Since ONLY the TENANT has the protection of the Residential Tenancies Act, if the OCCUPANT causes any trouble they can be kicked out on a moments notice. This tenant/occupant arrangement ensures that each high-rise building never has any problem with the OCCUPANT and that if the OCCUPANT causes trouble elsewhere the mandatory Code of Conduct will take care of that nonsense.

The best thing I can say about the concept of high-rise Student Villages is that everyone is a winner because:

- the students get a well run, really great place to live,
- the what used-to-be-ordinary neighborhoods where students used to live will return to normal,
- the former student landlords in these used-to-be-ordinary neighborhoods sell out at a profit because now everyone knows the house will once again be used for what is now a legal "family" purpose,
- already existing purpose-built-for-students two "family" and multi "family" zoned housing would be re-zoned rooming house/lodging house if these dwellings are on arterial roads or, in the case of being very close to arterial roads, on a case-by-case basis, and
- the municipality gets a tremendous boost in new taxable assessment from the construction of the high-rise Student Village apartments.

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We could begin the transition to Student Villages in as little as six months because such a scheme is fully implementable!

In summary, it is my hope that this above analysis will be studied and embraced by our City Council and it is with my many years of experience in researching Case Law, my immediate family ties to law enforcement, and my 28 years of personal involvement with trying to keep the lid on the many student rental dwellings in my area of the city (near UWO) that I submit this analysis for public review.

Sincerely,



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