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TO:	CHAIR AND MEMBERS PUBLIC SAFETY COMMITTEE PUBLIC PARTICIPATION MEETING ON APRIL 2, 2012
FROM:	JAMES P. BARBER CITY SOLICITOR
SUBJECT	PUBLIC NUISANCE BY-LAW

RECOMMENDATION

The City Solicitor, with the concurrence of the Manager of Licensing and Municipal Law Enforcement Services, recommends that the public nuisance by-law be revised in accordance with the attached proposed by-law.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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Report to Planning Committee, December 8, 2008, Injunctions and Nuisances – Residential Units (attached).

BACKGROUND

1. What do public nuisance by-laws do?

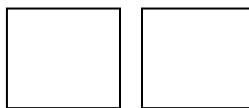
Public nuisance by-laws can regulate activities such as: obstructing the movement of persons; causing or allowing excessive noise; damaging, defacing or vandalizing property; fighting; swearing; using profane or obscene language; and impeding or molesting persons.

The writer has prepared a draft public nuisance by-law to revise the existing public nuisance by-law to regulate nuisance parties or gatherings that become public nuisances. London and other Ontario municipalities have enacted public nuisance by-laws which prohibit activities which are or become public nuisances.

An English court has defined public nuisance as follows: "...a nuisance which is so widespread in its range or so indiscriminate in its effect that it would not be reasonable to expect one person to take proceedings on his own responsibility to put a stop to it, but that it should be taken on the responsibility of the community at large."

2. Does the City need a public nuisance by-law that deals with nuisance parties and gatherings?

As the writer reported in 2008, the London Police Service and City By-law Enforcement staff have encountered nuisance and disorderly conduct issues involving large assemblies of people in residential areas in proximity to post-secondary educational institutions which have included destruction of public and private property, noise, open air burning, traffic obstruction, littering, loitering, consumption of liquor on public and private property, and disorderly conduct. These issues continue to create serious problems as recent events on Fleming Drive have demonstrated.



3. How would a nuisance party by-law add to the legal remedies that are presently available to law enforcement personnel?

The attached draft by-law is similar to “nuisance party” ordinances in the United States and general legislation in Britain which regulate street parties or parties on private property which may be of such magnitude that they constitute a public nuisance. Where nuisance parties have been prohibited by local legislation in municipalities in the United States, the applicable ordinances provide a variety of remedies for law enforcement personnel who receive complaints. The regulatory purpose of a nuisance party by-law is to create a duty upon those hosting a social event or party to control the participants and gives law enforcement personnel a mechanism to control and disperse people where the event has become a public nuisance that does not reach the standard of an unlawful assembly which may be dispersed under the provisions of the *Criminal Code*¹. The difficulty encountered by law enforcement personnel arises because of the unwillingness of owners or residents to identify, control or take responsibility for the conduct of individuals who attend a party who may or may not be invitees.

4. How would the proposed public nuisance by-law be enforced?

Based upon City policy for city enforcement staff, enforcement would be carried out by the "responsive enforcement method" (enforcement in response to complaints received for the purpose of achieving compliance in each individual situation); and by the "selective enforcement method" (enforcement concentrated significantly on a particular problem in a particular locality, whether or not in a high profile manner, in order to achieve greater compliance by the public in general) only after assessing, among other things, the availability of City personnel and budgeted funds, the complexity of the contemplated enforcement, the time period during which enforcement has to be carried out, and the degree of compliance likely to be achieved.

As well, the proposed by-law would be enforced by the London Police and certain provisions require an exercise of discretion by the Chief of Police or his designate.

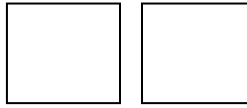
5. Some have suggested that a public nuisance by-law dealing with nuisance parties could substantially interfere with civil liberties and individual rights under the *Canadian Charter of Rights and Freedoms* or lead to legal action over a few frivolous complaints. Is this true?

Rights of individuals are guaranteed under Canada’s *Charter of Rights and Freedoms*. A public nuisance by-law may be subject to a *Charter* challenge where it is alleged that the by-law infringes on rights guaranteed by the *Charter*. The City Council must be satisfied in enacting any proposed by-law that it does not violate *Charter* rights or to the extent that there is some potential *Charter* infringement, that the means used by the City to achieve its objective are rationally connected to that objective, that there isn’t another way to achieve the same objective without violating anyone’s rights or freedoms, or violating them to a lesser degree, and that the City’s objective in enacting the by-law is significant enough to justify violating a *Charter* right.

¹ For example, section 67 of the Criminal Code provides that a person who is a Mayor, or the lawful deputy of a Mayor, who receives notice that at any place within the jurisdiction of the person, twelve or more persons are unlawfully and riotously assembled together shall go to that place and, after approaching as near as is safe, if the person is satisfied that a riot is in progress, shall command silence and thereupon make or cause to be made in a loud voice a proclamation in the following words or to the like effect:

Her Majesty the Queen charges and commands all persons being assembled immediately to disperse and peaceably to depart to their habitations or to their lawful business on the pain of being guilty of an offence for which, on conviction, they may be sentenced to imprisonment for life. God Save the Queen.

It is then an indictable offence (punishable by a penalty as severe as imprisonment for life) to oppose, hinder, assault a person who begins to make or is making this proclamation, who does not peaceably disperse and depart within 30 minutes.



The activities described in the proposed by-law must be occurring to the point where they meet the threshold of being a public nuisance. While the *Criminal Code* and provincial statutes contain provisions which address matters such as blocking or obstructing a highway, causing a disturbance, common nuisance, interfering with transportation facilities, mischief, offensive volatile substances, riots, unlawful assembly, breaches of the peace, unlawful possession or consumption of liquor, intoxication, and trespass, the proposed by-law provides a mechanism to address crowd behaviour which may include some or all of these elements and which constitutes a public nuisance.

London has experienced large gatherings on premises throughout the city which would clearly appear to have met the threshold for a public nuisance. These parties have involved the excessive consumption of alcohol, unreasonable noise levels, blocking streets to emergency vehicles, overcrowding of premises and violations of federal and provincial statutes and municipal by-laws. These nuisance parties have the potential to create a substantial risk to the health and safety of neighbourhoods and have constituted a persistent disruption. The proposed by-law provides a method for Police to quickly and effectively abate a public nuisance and provides penalties to those responsible for the nuisance.

6. Would existing by-laws still be enforced?

A public nuisance by-law can be considered an "umbrella by-law" which is applied in addition to the existing statutes, regulations, by-laws and civil remedies that are available. The proposed by-law would provide additional legal remedies to law enforcement personnel in addition to those available under existing legislation. Criminal charges (i.e. causing disturbances and unlawful assembly), charges under provincial statutes (i.e. liquor, trespass) and by-law charges (e.g. for noise, traffic, littering, parking, or zoning) may be laid against individuals where law enforcement personnel deem it appropriate to do so.

7. Who could be charged under the proposed by-law?

Any person who sponsors, conducts, continues, hosts, creates, attends, allows, causes or permits a nuisance party could be charged under the proposed By-law. Further, any person who is an owner, occupant, tenant, or otherwise has rightful possession or possessory control, individually or jointly with others, of any premises, who allows, causes or permits a nuisance party on premises in the City of London could be held responsible.

8. What about parties that constitute a nuisance that occur within dwellings, or private buildings?

The proposed by-law would not apply to parties or gatherings within buildings or dwellings. The proposed by-law would apply to parties or gatherings that occur in any public place and private property which includes any yard appurtenant to a building or dwelling or vacant lands. The City's current by-laws (such as the Noise By-law) will continue to apply and be enforced as they have in the past. As well, property owners have civil remedies in tort in relation to offensive behaviour by their neighbours.

9. What kind of remedies could the City seek under the proposed by-law?

The proposed by-law could be enforced by prosecution pursuant to the provisions of the *Provincial Offences Act*. The proposed by-law provides that the maximum fine may be up to \$10,000 and is in the discretion of the court, but in the case of nuisance parties, the minimum fine would be \$500.

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A court may make a prohibition order under section 431 of the *Municipal Act, 2001* prohibiting the continuation or repetition of an offence.

A by-law may also be enforced by proceedings for an injunction which could be instituted by any person including the City. The enactment of a by-law makes injunctive proceedings available. If an injunction is granted, an injunction may be enforced through contempt proceedings in which a judge may order that the person in contempt: be imprisoned for such period and on such terms as are just; be imprisoned if the person fails to comply with a term of the order; pay a fine; do or refrain from doing an act; pay such costs as are just; and comply with any other order that the judge considers necessary.

In addition, the *Municipal Act, 2001* provides as follows:

447.1 (1) Upon application of a municipality, the Superior Court of Justice may make an order requiring that all or part of a premises within the municipality be closed to any use for a period not exceeding two years if, on the balance of probabilities, the court is satisfied that,

(a) activities or circumstances on or in the premises constitute a public nuisance or cause or contribute to activities or circumstances constituting a public nuisance in the vicinity of the premises;

(b) the public nuisance has a detrimental impact on the use and enjoyment of property in the vicinity of the premises including, but not limited to, impacts such as,

(i) trespass to property,

(ii) interference with the use of highways and other public places,

(iii) an increase in garbage, noise or traffic or the creation of unusual traffic patterns,

(iv) activities that have a significant impact on property values,

(v) an increase in harassment or intimidation, or

(vi) the presence of graffiti; and

(c) the owner or occupants of the premises or part of the premises knew or ought to have known that the activities or circumstances constituting the public nuisance were taking place or existed and did not take adequate steps to eliminate the public nuisance. 2006, c. 32, Sched. A, s. 184.

10. Are there other measures that the City could consider to address nuisance behaviour?

Municipalities in other jurisdictions have implemented measures that go beyond the measures recommended in this report. Those measures have included substantial inspection fees including police service costs where law enforcement personnel are called out to address nuisances on premises; licensing requirements requiring owners and tenants of residential property to control nuisances on their property failing which the licence may be revoked; notice requirements describing municipal requirements which must be provided to tenants prior to renting residential property; a mandatory annual review of complaints and actions taken pursuant to the nuisance party regulations; and the elimination of events which are associated with nuisance behaviour.

The proposed by-law is similar to that enacted by other jurisdictions and appears to be objectively related and proportional to the problems associated with the nuisance behaviour addressed by the proposed by-law.

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If the proposed by-law is passed, tickets cannot be issued under the current public nuisance by-law as it will be repealed by the proposed by-law, and tickets cannot be issued under the proposed by-law until such time as the City receives a Set Fine Order from the Senior Regional Judge under the *Provincial Offences Act*.

The Manager of Licensing and Municipal Law Enforcement Services, and the Chief of Police were consulted with respect to this report.

CONCURRED IN BY:	PREPARED AND RECOMMENDED BY:
OREST KATOLYK MANAGER OF LICENSING AND MUNICIPAL LAW ENFORCEMENT SERVICES	JAMES P. BARBER CITY SOLICITOR

Att.