

--	--

<b>TO:</b>	<b>COMMUNITY AND PROTECTIVE SERVICES COMMITTEE June 5 , 2017</b>
<b>FROM:</b>	<b>G. KOTSIFAS, P. ENG. MANAGING DIRECTOR OF DEVELOPMENT AND COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL</b>
<b>SUBJECT:</b>	<b>NOISE BY-LAW AMENDMENT – TEMPORARY NOISE PERMITS; OUTDOOR PATIOS PUBLIC PARTICIATION MEETING</b>

<b>RECOMMENDATION</b>
-----------------------

That on the recommendation of the Managing Director of Development and Compliance Services and Chief Building Official, an amendment to the Noise By-law (attached hereto as Appendix A) **BE INTRODUCED** at the Municipal Council Meeting on June 13, 2017, noting that the amendment addresses how sound is measured, associated time limits and a new regulation for temporary noise permits for outdoor patios.

<b>BACKGROUND</b>
-------------------

On March 20, 2017, Civic Administration indicated at the SPPC meeting that they would report back on a process of addressing amplified music on outdoor patios. This report provides a summary of noise enforcement protocol by City staff and recommends several amendments to the temporary noise permit regulations of the Noise By-law. A separate report from Planning Services will be presented on June 6, 2017 at the Planning and Environment Committee on zoning regulations applicable to outdoor patios associated with restaurants and taverns.

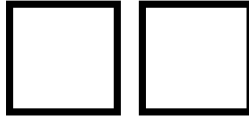
**What is the role of the City in addressing nuisance noise?**

When sound adversely impacts a person, causes loss of enjoyment of the normal use of property or interferes with the normal conduct of business, that sound or grouping of sounds become a nuisance commonly referred to as noise. There are several general effects of noise on human beings:

- temporary and/or permanent hearing loss
- communication difficulties
- stress
- annoyance
- reduction in performance
- sleep disturbance, fatigue
- increase in blood pressure/hypertension
- issues with learning and education

(source: Canadian Hearing Society)

When sound moves into the realm of a nuisance noise, citizens expect relief in the form of municipal government interaction to either reduce the intensity ( too loud), reduce the propensity ( too long in duration) or address the time of the noise ( too early / late) . The Municipal Act ( sec. 129) allows municipalities to prohibit and regulate with respect to noise. London’s Noise By-law was enacted in May, 2009.



### **How are noises classified in the Noise By-law?**

There are two general categories and associated methods of determining if a sound is a nuisance: qualitative and quantitative.

The general prohibition in the Noise By-law for qualitative noise states that “ no person shall make, cause or permit and unreasonable noise or noise that is likely to disturb the inhabitants”. Examples of unreasonable noise that is likely to disturb inhabitants at the point of reception in residential areas include:

- Persistent dog barking
- Amplified sound – stereos, televisions
- Human noise - shouting, yelling
- Construction – renovation, new development
- Power equipment – snow clearing, lawn mowers

While some of the nuisance noise has no time exemptions such as loud stereos, other noises - such lawn lawnmowers, have reasonable time permissions as they are related to common and acceptable property maintenance.

In order to address qualitative noise matters, the investigating officer ( Municipal Law Enforcement Officer ( MLEO), Police Officer) must make a judgement call to determine if the noise is clearly audible at the point of reception in a residential area. In order to make a judgment decision, the investigating officer will discuss with the complainant how the alleged noise is negatively impacting them. Based on the conclusion of the investigation , the officer has a number of options: mark the complaint as invalid, issue a verbal warning, issue a notice of contravention, issue a Provincial Offense notice ( ticket ) or issue a summons to court.

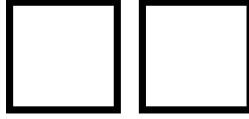
For issues related to quantitative noise such as industrial noise or residential air conditioners, the intensity of the sound is measured by decibels ( dB). On the dB scale, the smallest audible sound a person can hear is 0 dB. A sound ten times more powerful is 10 dB. In mathematical terms, decibels are a base ten logarithmic unit; increasing a sound by 10 dBs results in a sound that is twice as loud as the base sound. The City’s MLEOs are qualified to measure sound intensity, address noise issues and provide evidence in court.

### **What amendments are recommended for temporary noise permits regulations?**

The Noise By-law grants the Manager of By-law Enforcement as the approval authority to issue, refuse to issue, revoke, suspend or to impose conditions for temporary noise permits. These permits may be issued for construction noise and community events. The approval authority may impose conditions on the type and volume of sound, the times of the day which sounds can be made, the expiry date of the permit, posting of security, and requiring monitoring of the sound levels by the applicant. The approval authority does not have any flexibility in permitting sounds above 90 dB or allowing the sounds past 11 p.m. The applicant submits the following: event description, location, source of sound, time of day and period of time event is planned to occur and planned noise mitigation. A temporary noise permit cannot exceed six months. Applicants who do not agree with the decision of the approval authority have appeal rights to the City’s Hearings Officer.

- **Measurement of sound**

For temporary noise permits, one of the minimum conditions the approval authority shall impose is a maximum volume of amplified sound of 90 decibels measured at 30 metres (100 feet) from the sound source. This distance from the sound source regulation is problematic for several reasons: how do you determine where to take sound readings when there are multiple sound sources (speaker stacks)?; how do you take an accurate average reading when the crowd noise overrides the event’s sound source?; why take a sound reading at a location where patrons are not complaining about the sound?



Civic Administration discussed this matter with several acoustic experts who have expertise in logistics of sound associated with large outdoor music events. They concur with the above challenges of where to physically take accurate sound readings to address potential noise issues at surrounding noise sensitive locations. Suggestions were made to focus on the point of reception and not a location at a certain distance from the stage or sound source, referred to in the sound industry as “Front Of House”, as inaccurate sound readings lead to flawed decisions.

Civic Administration is recommending that decibel readings for temporary noise permits be taken at a location as determined by the Manager of By-law Enforcement. It is more reasonable and justifiable that noise readings be taken at a distance from the event (i.e. distance from property line) where the noise could be impacting the inhabitants of the surrounding area. The approval authority should have the operational flexibility to determine where sound readings are taken as conditions for temporary permits.

- **Time limit**

For temporary noise permits, another one of the minimum conditions the approval authority shall impose is a maximum time limit of 11 p.m. In the 2016 London Music Census, one of the questions related to the 11 p.m. curfew. The following are the results of the Census with respect to supporting a later curfew:

- Musicians – 62% ( 385 responses)
- Festivals - 69% (13 responses)
- Fans - 61% (528 responses)
- Venues – 44% ( 27 responses)

Some flexibility is required if, for example, the final act of a large multi-band event is delayed ( i.e. weather) from starting or continuing with their set and require some minor extensions to complete their set and accompanying encore. Requiring a hard stop at 11 p.m. does not appear to be reasonable in all cases. Civic Administration is recommending that the temporary noise permit regulations respecting time limits be amended to allow for the issuance of temporary noise permits for community events to 12 midnight.

- **Outdoor patios associated with restaurants and taverns**

In July 1993, regulations were introduced into the Z.-1 Zoning By-law prohibiting amplified music or electronic music, dancing or other forms of entertainment, with the exception of non-amplified acoustic music, on outdoor patios. Amplified music on outdoor patios on private property legally established before the adoption of these July 1993 Zoning By-law regulations are not governed by these regulations. Outdoor patios on private property established after July 1993 are not permitted to have amplified music. The City Planner is recommending that this regulation be removed from the Zoning By-law. A public participation meeting before the Planning and Environment Committee is scheduled for June 6, 2017 to review this matter.

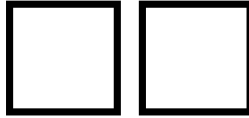
In April, 2017 the London Music Office conducted an online survey through [www.londonmusicoffice.com](http://www.londonmusicoffice.com) regarding amplified music on private patios throughout the City of London. The following are the results of the survey (707 respondents) with respect to allowing amplified entertainment on private patios:

- 90% support amplified entertainment
- 10% do not support any form of amplified entertainment

Civic Administration is recommending that amplified music on private commercial patios be addressed by applying the temporary noise regulations in the Noise By-law. In addition to the standard submission requirements, applicants would be required to submit a sound management plan prepared by an acoustic engineer. This plan should include the following:

- patio floor plan
- location and direction of all sound sources
- noise complaint / mitigation protocol

Upon submission of an application for a temporary noise permit, the approval authority would review the application to determine if amplified entertainment on the subject outdoor patio would



constitute a good neighbourhood fit with surrounding land uses. All approved permits would contain the following conditions:

- maximum amplified sound of 70 decibels measured at a location ( i.e. noise sensitive locations) as determined by the approval authority; and
- maximum time period of amplified sound not to extend past 12 midnight.

As per the regulations for temporary noise permits, the above two conditions are the minimum conditions the approval authority may impose. The approval authority could impose conditions that are more restrictive depending on the circumstances (for example 60 decibels from point of reception; times limited from 4 p.m. to 10 p.m. at the latest).

The maximum sound permission of 70 decibels for patios was determined based on ambient sound readings taken in the downtown area and test sound readings which were taken at various locations near outdoor patios at various locations throughout the City. Using an amplified sound source, four patios participated in the test sound readings to determine reasonable levels of sound based on volume, speaker locations and sound mitigation features. A summary of the sound readings is found in Appendix B. Note that the recommended decibel reading is a maximum; based on the location of the private commercial patio, the approval authority has the discretion under the Noise By-law to issue individual temporary noise permits that impose conditions that sound must not exceed a volume lower than the maximum guideline.

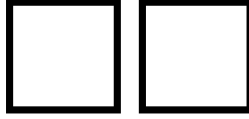
<b>CONCLUSION</b>
-------------------

Taking into consideration test sound readings of amplified music on patios and results of the London Music Office Census, Civic Administration is recommending an amendment to the temporary noise permit provisions of the Noise By-law. These amendments address the following matters:

- flexibility in location of sound measurements with a focus on noise sensitive locations
- maximum time limit of 12 midnight for temporary noise permits related to community events
- temporary noise permit approval process for patios with conditions of a maximum sound level of 70 decibels and the maximum time limit of 12 midnight

Each outdoor patio owner wishing to have amplified music will be required to apply for a temporary noise permit. As each patio has unique locational attributes in terms of surrounding land uses, size of patio and location of patio ( ground level vs. elevated), each application will be evaluated on its own merits.

<b>PREPARED BY:</b>	<b>SUBMITTED BY:</b>
<b>O. KATOLYK, MLEO (C), RPP CHIEF, MUNICIPAL LAW ENFORCEMENT OFFICER</b>	<b>G. KOTSIFAS, P. ENG. MANAGING DIRECTOR OF DEVELOPMENT AND COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL</b>



**APPENDIX A**

Bill No.  
2017

By-law No. PW-

A By-law to amend By-law PW-12, as amended,  
entitled "A By-law to provide for the Regulation and  
Prohibition of Noise"

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, provides that a municipal power shall be exercised by by-law;

THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. Subsection 4.1(5)(c) of By-law PW-12 is repealed and replaced with the following new section 4.1(5)(c):

- (c) The minimum conditions that the Manager of By-law Enforcement shall impose under subsection 5(b) are:
  - (i) subject to subsection (ii), the volume of amplified sound that may be made shall not exceed a sound pressure of at most 90 decibels at a point of reception determined by the Manager of By-law Enforcement;
  - (ii) the volume of amplified sound that may be made from an outdoor patio shall not exceed a sound pressure of at most 70 decibels at a point of reception determined by the Manager of By-law Enforcement; and
  - (iii) the times during which sound may be made shall be limited to the hours of 9:00 a.m. at the earliest and 12:00 midnight at the latest.

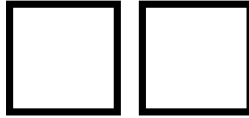
2. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on \_\_\_\_\_, 2017.

Matt Brown  
Mayor

Catharine Saunders  
City Clerk

First Reading -  
Second Reading –  
Third Reading –



**Appendix B – Sound Readings**

Readings were conducted on a Sound Level Meter gathering quantitative noise readings measured in decibels (dBA).

**Ambient Sound Levels**

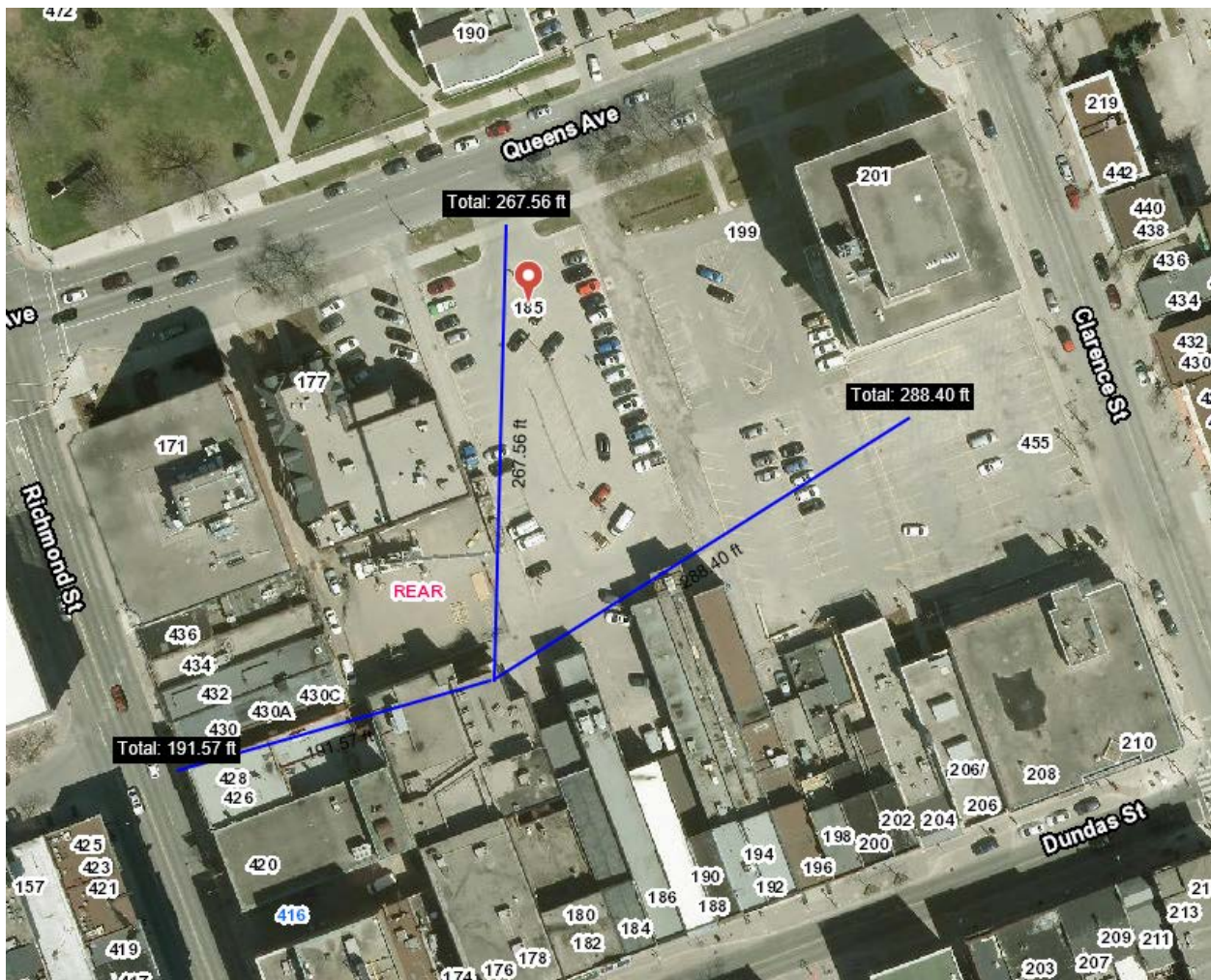
Location - Richmond Street – various locations on April 29, 2017

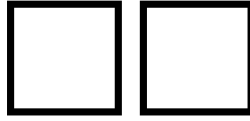
- Richmond St/Pall Mall @9pm 70-73 dBA
- Richmond St/Mill St @10:40pm 73-86 dBA (heavier traffic level)
- Richmond St /Angel St @11:30pm 70 – 76 dBA
- Richmond St/John St @1:14 am 77- 87 dBA

**Amplified music on outdoor patios**

1. Music Hall

DATE	LOCATION	AMBIENT	dBA reading
May 3, 2017	185 Queens Ave – rooftop patio	65 – 75 dBA	n/a
1 <sup>st</sup> Reading	On patio 10ft from source	Same as above	100
2 <sup>nd</sup> Reading	Queens Ave sidewalk	Same as above	75 (clearly audible)
3 <sup>rd</sup> Reading	Clarence parking lot	Same as above	70
4 <sup>th</sup> Reading	Richmond St	Same as above	80 (traffic noise)

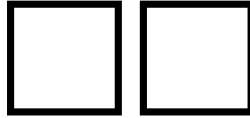




2. Wortley Roadhouse

DATE	LOCATION	AMBIENT	dBA reading
May 11, 2017	190 Wortley Road – patio is ground level	60 - 65 dBA	n/a
1 <sup>st</sup> Reading	On patio 10ft from source	Same as above	86 - 88
2 <sup>nd</sup> Reading	205 Wortley Rd – residential property	Same as above	65 - 74
3 <sup>rd</sup> Reading	136 Elmwood Ave E - residential	Same as above	60 - 70



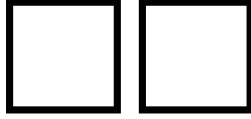


3. Winks Eatery

DATE	LOCATION	AMBIENT	dBA reading
May 11, 2017	551 Richmond St	66 – 71 dBA	n/a
1 <sup>st</sup> Reading	On patio 10ft from source	Same as above	75 – 80
2 <sup>nd</sup> Reading	Albert St sidewalk	Same as above	68 – 73
3 <sup>rd</sup> Reading	186 Albert St	Same as above	73 – 75

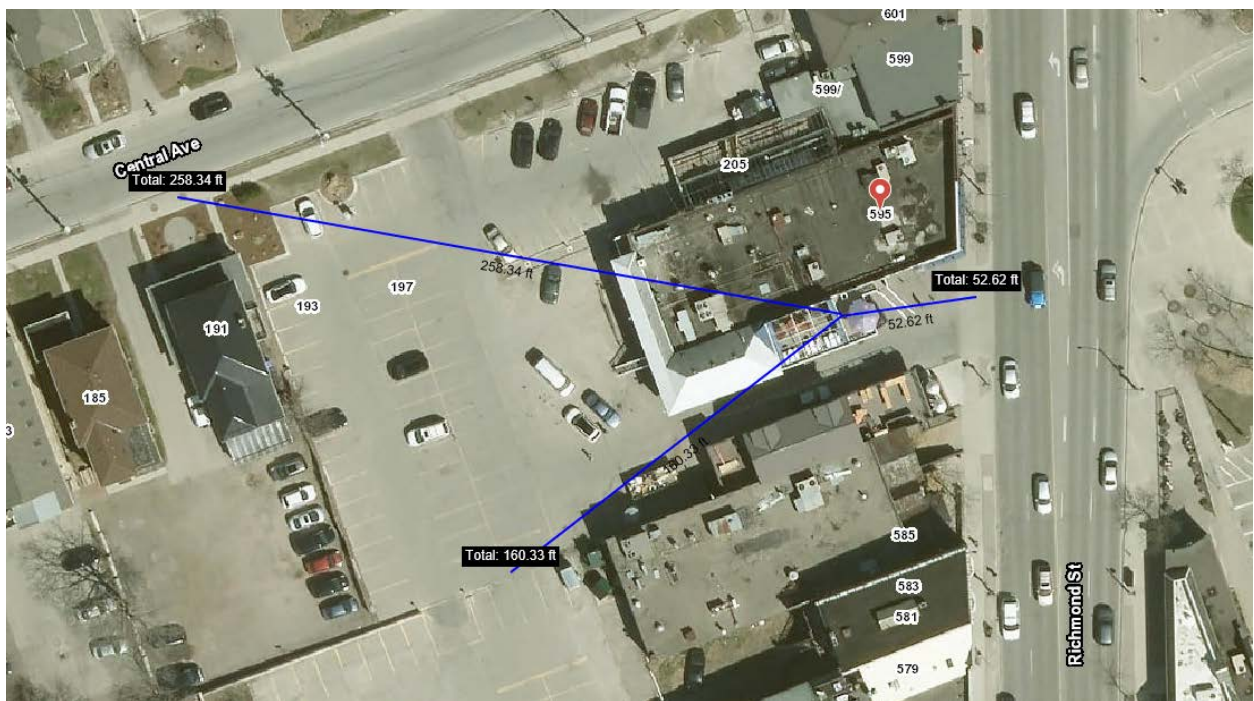






4. Joe Kools / Toboggan

DATE	LOCATION	AMBIENT	dBA reading
May 11, 2017	595 Richmond St	62 -81 dBA	n/a
1 <sup>st</sup> Reading	On patio 10 ft from source	Same as above	83 - 93
2 <sup>nd</sup> Reading	Rear Parking Lot	Same as above	65
3 <sup>rd</sup> Reading	191 Central Ave	Same as above	60 – 65
4 <sup>th</sup> Reading	Richmond St	Same as above	75 – 80



Agenda Item # Page #

--	--