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TO:	CHAIR AND MEMBERS PUBLIC SAFETY COMMITTEE MEETING ON MAY 10, 2012
FROM:	JAMES P. BARBER CITY SOLICITOR
SUBJECT	PUBLIC NUISANCE BY-LAW

RECOMMENDATION

That, on the recommendation of the City Solicitor, with the concurrence of the Manager of Licensing and Municipal Law Enforcement Services, the attached proposed by-law (Appendix 1) **BE INTRODUCED** at the Municipal Council meeting of May 22, 2012.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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2008-10-08 Report to Planning Committee - Injunctions and Nuisances – Residential Units

2012-04-02 Report to Public Safety Committee – Public Nuisance By-law

BACKGROUND

At its meeting of April 10, 2012, City Council adopted the following recommendation.

That the following actions be taken with respect to the attached proposed Public Nuisance By-law entitled "A by-law to prohibit and regulate public nuisances within the City of London", in order to address nuisance parties and gatherings;

- a) the Public Safety Committee (PSC) supports in principle the proposed Nuisance By-law;
 - b) that the proposed by-law BE REFERRED to a special PSC meeting to be held in May 2012;
 - c) the proposed by-law BE REFERRED to Civic Administration and the Town and Gown Committee for further review;
 - d) the Near Campus Strategy, including modification of zoning by-law, BE CIRCULATED to Municipal Council and the Town and Gown Committee;
 - e) the Civic Administration BE REQUESTED to contact the Ministry of Municipal Affairs and Housing to discuss possible changes to the Planning Act to restrict the number of students per household;
 - f) the Town & Gown Committee BE REQUESTED to review the possibility of enacting a Student Code of Conduct; and
 - g) the London Police Services Board BE REQUESTED to ask the Chief of Police to submit a report to the Public Safety Committee, after each occasion where, if adopted, this by-law is utilized, providing information on why the by-law was utilized; if the situation in question was extraordinary; what occurred; and, in retrospect, if the by-law was necessary to address the situation;
- it being noted that the Public Safety Committee heard the presentation from the Manager, Bylaw Enforcement, and a verbal delegation from B. Duncan, Chief, and received written submissions from the following, with respect to this matter;

The Civic Administration has reviewed the comments at the public meeting and has attended at the Town and Gown Committee to receive its comments and following that review, the City Solicitor's Office in conjunction with the Manager of Licensing and Municipal Law Enforcement Services has prepared a further draft for consideration by the Public Safety Committee in accordance with paragraphs b) and c) of the Council resolution.

Attached is a revised draft Public Nuisance By-law (Appendix 1). All changes made to the draft since the April 10/11, 2012 Council Resolution are set out in blackline (Appendix 2). These changes address concerns raised at the public meeting of April 2, 2012.

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In preparing the proposed draft revised by-law, the City Solicitor's Office has relied upon the enabling provision in s. 128 the *Municipal Act, 2001* which provides that "a local municipality may prohibit and regulate with respect to public nuisances including matters that, in the opinion of council, are or could become or cause public nuisances" and "the opinion of council if arrived at in good faith is not subject to challenge in any court". The wording in the by-law has been revised in an attempt to leave no ambiguity that the "conduct of the persons in attendance, results in any one or more of the following activities occurring **so as to constitute a public nuisance ...**". The by-law indicates on its face that the conduct identified in the by-law must meet the threshold established by the common law for being a public nuisance. Many Ontario Court decisions have relied upon the English Court of Appeal decision in *Attorney General v. P.Y.A. Quarries Ltd.* which states that any nuisance is public which materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects; and further that a public nuisance is 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.

City Council has already enacted the following provision in the Streets By-law:

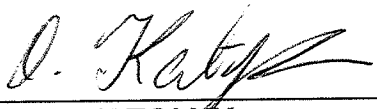
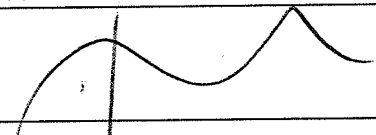
2.6 Public nuisance - upon street

No person shall, (either by himself or by permitting others) without lawful authority, cause a public nuisance in or upon a street, by fire, water, vapour, noise or any means whatsoever.

In the event that a contravention of the Public Nuisance By-law is alleged, enforcement, as with any other City by-law, would be by way of prosecution or injunction and the onus is on the person enforcing the by-law to prove a contravention of the by-law before the Ontario Courts to the applicable standard of proof. The proposed by-law and the scope of enforcement in relation to the proposed by-law is subject to judicial review in the context of proceedings under the *Municipal Act, 2001*, the *Judicial Review Procedure Act*, the *Canadian Charter of Rights and Freedoms* or in any enforcement proceedings instituted under the *Provincial Offences Act* or under the *Ontario Rules of Civil Procedure*.

At this time, we do not recommend inserting any "reprisal" provision for persons who retaliate against others for making a complaint under the by-law. The City has not included reprisal provisions in any other by-law and this type of issue has been addressed through enforcement procedures. Any form of retaliation that constitutes a criminal offence could be dealt with through the Criminal Code.

The writer previously advised City Council with respect to enforcement of the proposed by-law in his report of April 2, 2012. Enforcement of the by-law is within the discretion of the enforcement officer, subject to the officer having reasonable and probable grounds to believe that an offence has occurred. The grounds to seek an injunction would have to be satisfactory to City Council.

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

Att.

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APPENDIX 1

Bill No.
2012

By-law No.

A By-law to prohibit and regulate public nuisances within the City of London.

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

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a Municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 8 of the *Municipal Act, 2001* provides that the powers of a Municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate, and to enhance their ability to respond to municipal issues;

AND WHEREAS section 10 of the *Municipal Act, 2001* provides that a Municipality may pass by-laws respecting: Economic, social and environmental well-being of the Municipality; Health, safety and well-being of persons; Protection of persons and property; Structures, including fences and signs;

AND WHEREAS section 128 of the *Municipal Act, 2001* provides that, without limiting sections 9 and 10, a local Municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances, and the opinion of Council under this section, if arrived at in good faith, is not subject to review by any court;

AND WHEREAS, in the opinion of Council, nuisance parties, public urination and defecation, and knocking over objects on the Highway are or could become or cause public nuisances;

AND WHEREAS section 425 of the *Municipal Act, 2001* establishes that any person who contravenes any by-law of the Municipality is guilty of an offence;

AND WHEREAS section 435 of the *Municipal Act, 2001* and By-law A-30 provide for the exercise of powers of entry by municipal law enforcement officers and police officers;

AND WHEREAS section 444 of the *Municipal Act, 2001* provides that a municipality may make an order requiring a person who contravened a by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity;

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

1. DEFINITIONS

In this By-law,

"Building" means any permanent structure consisting of a roof supported by walls or columns that is used or intended to be used for the shelter, accommodation or enclosure of persons, animals, goods, chattels or equipment;

"Chief of Police" means the Chief of Police of the London Police Service, or designate;

"City" means The Corporation of the City of London;

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“**Dwelling**” means a Building containing one or more dwelling units;

“**Highway**” includes a common and public highway, highway, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles or persons, and includes the area between the lateral property lines thereof, including sidewalks and boulevards, and Highways shall have a corresponding meaning;

“**Municipality**” means the land within the geographic limit of the City of London;

“**Nuisance Party**” means a social gathering on Premises within the Municipality and which, by reason of the conduct of the persons in attendance, results in any one or more of the following activities occurring so as to constitute a public nuisance whether occurring on neighbouring public or private property:

- (a) disorderly conduct;
- (b) public drunkenness or public intoxication;
- (c) the unlawful sale, furnishing, or distribution of alcoholic beverages or controlled substances;
- (d) the deposit of refuse on public or private property;
- (e) damage to or destruction of public or private property;
- (f) pedestrian traffic, vehicular traffic, or illegal parking that obstructs the free flow of traffic or could interfere with the ability to provide emergency services;
- (g) unreasonable noise, including loud music or shouting;
- (h) unlawful open burning or fireworks;
- (i) public disturbances, including public brawls or public fights;
- (j) outdoor public urination or defecation;

“**Premises**” means any public or private place in the Municipality, including but not limited to Highways, parks, parking lots, yards appurtenant to a Building or Dwelling or vacant lands, but does not mean a Building or Dwelling.

2. PUBLIC URINATION / PUBLIC DEFECATION

2(1) In Section 2 only, “Public Place” is defined as:

“**Public Place**” includes a Highway, public park, parking lot or other lands to which the public has access as of right or by invitation and includes private property that is exposed to public view, but does not include an enclosed washroom facility.

2(2) No person shall urinate or defecate in a Public Place.

3. MAILBOXES ETC. ON HIGHWAY

No person shall knock over or attempt to knock over a Canada Post mailbox, Canada Post relay box, newspaper box, Blue Box, or garbage container, lawfully located on a Highway. This section shall not apply to City employees, or any person under contract with the City, acting under the City’s Waste Management By-law.

4. NUISANCE PARTIES

4(1) No person shall sponsor, conduct, continue, host, create, attend, allow, cause or permit a Nuisance Party.

4(2) No person who, individually or jointly with others, is an owner, occupant, tenant, or who otherwise has rightful possession of or possessory control of any Premises, shall allow, cause or permit a Nuisance Party on said Premises under their possession or control.

5. ORDER TO DISCONTINUE ACTIVITY

5(1) Upon the order of the Chief of Police or his or her designate or the City’s Manager of Licensing and Municipal Law Enforcement Services or his or her designate, a Nuisance Party shall cease and all persons not residing on the Premises shall leave the Premises where it is occurring.

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5(2) An order under this section shall identify:

- (a) the location of the land on which the contravention occurred;
- (b) the reasonable particulars of the contravention of the By-law; and
- (c) the date and time by which there must be compliance with the order.

5(3) An order under this section may be given verbally or may be served personally on the person to whom it is directed. If the order is given by regular mail to the last known address of that person, and if given by registered mail, it shall be deemed to have been given on the third day after it is mailed. Service on a corporation can be effected by registered mail to the corporate mailing address.

5(4) No person shall fail to leave the Premises after having been directed to leave the Premises by an order to discontinue activity under this By-law.

6. CLOSE PUBLIC HIGHWAY

6(1) The Chief of Police, a London Police Service police officer, or a municipal law enforcement officer may temporarily close any Highway or portion thereof to public travel under this By-law where a Nuisance Party is occurring on or adjacent to the Highway by placing a notice on the Highway to be closed in accordance with the *Municipal Act, 2001*.

6(2) Where a Highway or portion of a Highway has been closed under this By-law, the common law right of passage by the public over the Highway and the common law right of access to the Highway by an owner of land abutting the Highway are restricted, as directed by the Chief of Police, a London Police Service police officer, or a municipal law enforcement officer.

6(3) No person shall use a Highway, or portion of a Highway that has been closed under this By-law except with lawful authority or in accordance with the direction of the Chief of Police or other officer pursuant to this section.

6(4) No person shall, without lawful authority, remove or deface any barricade, device, detour sign or notice placed on a Highway pursuant to this By-law.

7. ENFORCEMENT AND INSPECTION

7(1) The provisions of this By-law may be enforced by a municipal law enforcement officer, London Police Service police officer, or other individual duly appointed for the purpose of enforcing this By-law.

7(2) Every municipal law enforcement officer and London Police Service police officer may carry out an inspection to determine whether the provisions of this By-law are being complied with in accordance with the City's Inspections By-law and shall have the right to enter lands pursuant to the provisions of the Inspections By-law and the *Municipal Act, 2001*.

8. PENALTY

Every person who contravenes any provision of this By-law is guilty of an offence, and on conviction is liable to:

- (a) a maximum fine of \$10,000; and
- (b) for convictions under subsections 4(1), 4(2), or 5(4), a minimum fine of \$500.

9. SEVERABILITY

If any provision or part of this By-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the balance of the By-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.

10. CONTINUATION - REPETITION - PROHIBITED - BY ORDER

The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.

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11. SHORT TITLE OF BY-LAW

This By-law may be referred to as the "Public Nuisance By-law".

12. REPEAL

By-law PH-13 is hereby repealed.

13. FORCE AND EFFECT

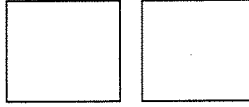
This By-law shall come into force and effect on the day it is passed.

PASSED in Open Council on

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First Reading -
Second Reading -
Third Reading -



APPENDIX 2

Bill No.
2012

By-law No.

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AND WHEREAS section 10 of the *Municipal Act, 2001* provides that a Municipality may pass by-laws respecting: Economic, social and environmental well-being of the Municipality; Health, safety and well-being of persons; Protection of persons and property; Structures, including fences and signs;

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AND WHEREAS, in the opinion of Council, nuisance parties, public urination and defecation, and knocking over objects on the Highway are or could become or cause public nuisances

~~and in the opinion of Council the following activities are or could become or cause public nuisances:~~

- ~~(a) disorderly conduct;~~
- ~~(b) public drunkenness or public intoxication;~~
- ~~(c) the unlawful sale, furnishing, or distribution of alcoholic beverages or controlled substances;~~
- ~~(d) the deposit of refuse or litter on public or private property;~~
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- ~~(f) pedestrian traffic, vehicular traffic, or illegal parking that obstructs the free flow of traffic or could interfere with the ability to provide emergency services;~~
- ~~(g) unreasonable noise, including loud music, talking, singing or shouting;~~
- ~~(h) unlawful open burning or fireworks;~~
- ~~(i) public disturbances, including public brawls, fights, quarrels or threats;~~
- ~~(j) outdoor public urination or defecation; or~~
- ~~(k) any other conduct or activity at a social gathering or party that is carried on so as to constitute a public nuisance;~~

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124. REPEAL

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132. FORCE AND EFFECT

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PASSED in Open Council on

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First Reading -
Second Reading -
Third Reading -