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TO:	CHAIR & MEMBERS COMMUNITY AND PROTECTIVE SERVICES COMMITTEE
FROM:	G. KOTSIFAS, P. ENG. MANAGING DIRECTOR OF DEVELOPMENT & COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL
SUBJECT:	PUBLIC MESSAGING IN THE COMMUNITY – NUISANCES Meeting on May 29, 2018

RECOMMENDATION

That on the Recommendation of the Managing Director, Development and Compliance Services and Chief Building Official, the following actions be taken with respect to Public Messaging in Public Spaces:

- A) This report **BE RECEIVED** for information purposes; and
- B) Civic Administration **BE DIRECTED** to draft by-law amendments, for consideration at a future meeting of the Community and Protective Services Committee, to:
 - a. amend the Public Nuisance By-law to regulate abusive or insulting language that unnecessarily interferes with the use and enjoyment of public space by other persons; and
 - b. amend the Sound By-law to regulate amplified live speech.

BACKGROUND

In 2016 and 2017 Municipal Law Enforcement Services received in excess of 50 complaints related to individuals or groups publically expressing their views while on municipal lands, some using amplification to do so. London Police Services also received as many complaints on these same activities. In 2018 both Municipal Law Enforcement Services and London Police Services are again receiving similar complaints. Some complaints have indicated that the individuals expressing their views on municipal property are using amplification devices to do so, and are using personal invective, such as personal insults or personally abusive language, towards other individuals who happen to be in the area.

Freedom of expression, which would include expressing views on public property, is a guaranteed freedom under the *Charter of Rights and Freedoms*. If a municipality wishes to limit this freedom, it must be a reasonable limit prescribed by law and “demonstrably justified in a free and democratic society”.

The Ontario Court of Appeal has upheld a regulatory body’s authority to pass a regulation that made it an offence to use abusive or insulting language which unnecessarily interferes with the use and enjoyment of a Park by other persons.¹ The court stated “[the section] does not cast a wide net over expressive activity in the Parks. ...the provision does not curtail expression that society expects a reasonable person to be able to tolerate. It does not restrict expression that is annoying, or even infuriating. People using public spaces are required to tolerate exposure to ideas with which they intensely disagree – ideas that may be inimical to their own deeply cherished

¹ Bracken v. Niagara Parks Police, 2018 ONCA 261

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commitments and choices.” The Court of Appeal was clear about the limited scope of the expression the regulation would apply to:

... [the section] does not prohibit the expression of contentious or controversial ideas. It does not prohibit or curtail robust contributions to public debate. It does not prohibit incivility, profanity, or vulgarity. In proscribing the use of abusive or insulting language, it merely prohibits personal invective.

The *Municipal Act, 2001* provides that municipalities may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisance, and the opinion of Council under section 128 of the *Municipal Act*, if arrived at in good faith, is not subject to review by any court.

INFORMATION

Civic Administration has reviewed the four by-laws below that may address aspects of the activity of public address where it is causing a public nuisance or unnecessarily interfering with the use and enjoyment of the public space.

Parks & Recreation Area By-law PR-2: Within Part 3 Prohibited Matters section (9) indicates no person shall engage in riotous, boisterous, violent, threatening, or illegal conduct or use profane or abusive language, including: i) making any verbal comments or physical gestures, about or toward anyone that could reasonably be considered to be offensive, derogatory or abusive.

Public Nuisance By-law PH-18: The activities currently prohibited in this by-law are limited to nuisance parties, public urination/defecation, or the knocking over of mail boxes and garbage containers lawfully located on a highway.

Sound PW-12: This by-law regulates sound/noise that would be an unreasonable noise or noise likely to disturb inhabitants. The Sound By-law could be amended to regulate amplified public address by way of a Temporary Noise Exemption Permit which could include terms and conditions relating to time, date, location, volume, and duration.

Streets By-law S-1: Within Part 2 Prohibited Matters section 2.3 indicates 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.

CONCLUSION

To address public concerns related to personal invective affecting citizen and visitor enjoyment of London’s public spaces Civic Administration recommends that an amendment to the Public Nuisance By-law, which would apply to public spaces, be drafted for consideration at a future meeting to be heard before Community and Protect Services Committee. Civic Administration also recommends an amendment to the Sound By-law be drafted to regulate the amplification of live speech. Any amendments would protect the charter rights of the person and that of individuals to move freely without being harassed by offensive or abusive behaviour regardless of personal or religious beliefs.

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If a Public Participation Meeting is desired, Committee could recommend to council that the City Clerk be directed to advertise for and place on a future agenda a Public Participation Meeting with respect to this matter.

This report has been reviewed by London Police Services, City of London Corporate Security, and the City Solicitor's Office.

PREPARED BY:	SUBMITTED BY:
H. CHAPMAN MANAGER, MUNICIPAL LAW ENFORCEMENT SERVICES	O. KATOLYK CHIEF MUNICIPAL LAW ENFORCEMENT OFFICER
RECOMMENDED BY:	
G. KOTSIFAS, P.ENG. MANAGING DIRECTOR OF DEVELOPMENT AND COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL	

Cc: City Solicitor's Office