



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Licensing and By-Law Services Division
and
Transportation Planning and Parking Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	September 6, 2022
SUBJECT/REPORT NO:	Nuisance Party By-Law (PED22156) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Ben Spychaj (905) 546-2424 Ext. 7706
SUBMITTED BY:	Monica Ciriello Director, Licensing and By-Law Services Planning and Economic Development Department
SIGNATURE:	
SUBMITTED BY:	Brian Hollingworth Director, Transportation Planning and Parking Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That the draft Nuisance Party By-Law to regulate nuisance parties, attached as Appendix "A" to Report PED22156 which has been prepared in a form satisfactory to the City Solicitor, be received;
- (b) That 0.5 FTE for a Supervisor position and funding for the necessary training of By-Law staff within the Licensing and By-Law Services Division to administer the Nuisance Party By-Law be referred to the 2023 Operating Budget;
- (c) That, following the adoption of the 2023 Operating Budget, the draft Nuisance Party By-Law to regulate nuisance parties attached as Appendix "A" to Report PED22156 be brought to Council for adoption.
- (d) That the matter respecting this item, Item 22F from the Planning Committee Meeting on February 15, 2022, be identified as complete and removed from the Outstanding Business List.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

EXECUTIVE SUMMARY

The purpose of this report is to respond to the motion passed at the February 15, 2022 Planning Committee which stated:

That Licensing and By-Law Services be requested to consult with Hamilton Police Service and other community stakeholders, to identify best practices from other Ontario municipalities, and report back in the second quarter of 2022 next steps for the development and implementation of a Nuisance Party By-Law in the City of Hamilton.

Hamilton has experienced large gatherings/parties on premises throughout the City. Some of these gatherings/parties have involved nuisance behaviours of persons present including the excessive consumption of alcohol, very high noise levels, overcrowding of premises, urinating in public, congregation of large number of persons on public property resulting in the blockage of pedestrian and vehicular traffic, destruction of property and other violations of federal, provincial and municipal regulations.

In Ontario, a number of municipalities have enacted Nuisance Party By-Laws to provide additional enforcement options beyond those available under existing By-Laws and statutes (e.g. noise or property standards) and beyond those that are already available to police services (e.g. cannabis, liquor or unlawful assembly). The regulatory purpose of these Nuisance Party By-Laws is to create a duty upon those hosting a social event or party to control the participants.

Alternatives for Consideration – See Page 10

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial/Staffing: Currently, Municipal Law Enforcement (MLE) officers attend gatherings that could constitute a nuisance party in a limited and supportive capacity, with Hamilton Police Services acting as the lead enforcement agency. This role is undertaken by existing MLE staff. Staff anticipate that the additional responsibilities contained within the Nuisance Party By-Law would have additional staffing impacts for the supervision and coordination of By-Law staff’s response to nuisance parties, as well as for the training of officers. Staff are recommending that consideration of a 0.5 Supervisor FTE and resources for officer training be referred to the 2023 Operating Budget.

Legal: N/A

HISTORICAL BACKGROUND

Large unsanctioned gatherings in communities that have post-secondary institutions are a growing area of concern across Ontario. Municipalities and their services; including Police, Fire, Paramedics, Municipal Law Enforcement and Public Works departments are responding to these events, which have continued to increase in scope and scale.

The communities that comprise “off-campus” neighbourhoods are directly impacted by these events, damaging their sense of community safety.

As one example, on October 2, 2021, during Homecoming weekend for McMaster University, a large unsanctioned street party (“Fake Homecoming”) occurred off-campus in the Dalewood Avenue and Westwood Avenue area and expanded to nearly 5,000 attendees. This resulted in significant property damage, accumulation of waste and debris and the closure of city streets.

The results of this large unsanctioned gathering impacted the entirety of the City, leading to a significant diversion of first responders and other City resources to the event, the overturning of a vehicle, street closures, public and private property damage, public urination and defecation and damage to the community’s overall sense of safety.

With regards to costs:

- Hamilton Paramedic Service reported an expenditure of \$19,605.76 on October 2, 2021 for staff labour and response.
- Roadway Maintenance reported an increased expenditure of \$1,731.37 between October 2, 2021 and October 3, 2021 to carry out sweeping, accident clean-up and placing traffic signs (not including vandalized and/or stolen traffic signs).

Note: HPS and MLE did not collect cost metrics for this event.

In response to the “Fake Homecoming” event in 2021, a multi-disciplinary Public Safety Working Group was formed, which comprised representatives from:

- Hamilton Police Services;
- Hamilton Fire Department;
- Hamilton Paramedic Service;
- Licensing & By-Law Services;
- Public Health; and,
- McMaster University.

This newly formed working group addresses the risks and issues associated with large social gatherings/parties that may grow to become nuisance parties in Hamilton. In

preparation of St. Patrick's Day events on March 17, 2022 and an advertised unsanctioned gathering on March 19, 2022, the multi-department work group planned and coordinated operations to address potential nuisance parties.

Overall, municipal services reported a combined total expenditure of \$243,944.33 and 482 labor hours to address and mitigate the risks of the St. Patrick's Day street gatherings in the Dalewood and Westwood area (see Appendix "E" to Report PED22156).

Although the operation over the three days was successful, going forward; the Nuisance Party By-Law would provide an additional tool that would help send a strong message to residents in Hamilton that these types of parties will not be tolerated. Not only will fines be issued, but remedial charges related to the nuisance party may also be imposed, acting as a further deterrent to individuals responsible for these nuisance parties.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The *Municipal Act, 2001*, S.O. 2001, c. 25 provides that a municipality may pass By-Laws to prohibit and regulate certain public nuisances respecting the economic, social and environmental well-being of the community, and the health, safety and the protection of persons and property.

RELEVANT CONSULTATION

Staff from the following areas were consulted in the preparation of this report:

- City of Kingston
- City of Waterloo
- Hamilton Fire Department
- Hamilton Paramedic Service
- Hamilton Police Services
- Legal Services
- Planning & Economic Development
 - Licensing & By-Law Services
- Public Works
 - Roadway Maintenance
 - Waste Collection
- McMaster University
 - McMaster Students' Union
- Mohawk College
 - Mohawk Students' Association

ANALYSIS AND RATIONALE FOR RECOMMENDATION

In reviewing the best practices of other Ontario municipalities to regulating large social gatherings and parties that become nuisances, some municipalities have enacted standalone By-Laws to regulate and prohibit the behaviours associated with nuisance parties, whereas other municipalities have elected to amend their public nuisance By-Laws in response to the issue. While each By-Law is unique in its approach, the By-Laws are similar in defining the common features and characteristics of a “Nuisance Party”, specifically, a social gathering on public or private property that results in some of the following activities to constitute a public nuisance:

- disorderly conduct;
- public drunkenness or public intoxication;
- the unlawful sale, furnishing, or distribution of alcoholic beverages or controlled substances;
- the deposit of refuse on public or private property;
- damage to or destruction of public or private property;
- pedestrian traffic, vehicular traffic, or illegal parking that obstructs the free flow of traffic or could interfere with the ability to provide emergency services;
- unreasonable noise, including loud music or shouting;
- unlawful open burning or fireworks;
- public disturbances, including public brawls or public fights;
- outdoor public urination or defecation; or
- use of or entry upon a roof not intended for such occupancy.

Nuisance Party By-Laws apply to unsanctioned gatherings that meet this definition in any public place, private property, including any yard accessory to a building or dwelling or vacant lands. Typically, Nuisance Party By-Laws do not apply to parties fully contained within building or dwellings; however, depending on the circumstances, a Nuisance Party By-Law may apply, as well as other By-Laws or provincial regulations. It is important to note that the introduction of a Nuisance Party By-Law should not be interpreted as exempting any person from the requirement to comply with any other City By-Law. In the event of any overlap between the provision of the Nuisance Party By-Law and any other City By-Law, the provisions which are the more protective of the public assets of the City, the economic, social and environmental well-being of the City, and the health, safety and well-being of persons in the City shall apply.

JURISDICTIONAL SCAN OF ONTARIO MUNICIPALITIES

City staff consulted with By-Law enforcement in other municipalities regarding their respective Nuisance Party By-Laws and Public Nuisance By-Laws. Each representative was supportive of nuisance party provisions, indicating it was beneficial to officers as an additional enforcement tool.

City of Waterloo (By-Law No. 2011-125)

In 2011, the City of Waterloo enacted its Nuisance By-Law to include nuisance provisions, including:

- General prohibitions for behaviours in a public place;
- Authority for officers to issue an order to discontinue activity if the Director of By-Law Enforcement has reasonable grounds that a contravention of the By-Law has occurred and the specifics of the order;
- Authority for the Director of By-Law Enforcement to issue a work order if there are reasonable grounds that a contravention of the By-Law has occurred; and
- If a property owner fails to comply with an order, the authority to engage in remedial action and impose fees on the property owner's taxes.
- In 2019, the City of Waterloo amended the Public Nuisance By-Law to include definitions of "Designated Time" and "Nuisance Noise" and provision prohibiting any person from causing or permitting Nuisance Noise at any Designated Time (i.e. March 16, 17 and 18 between 12:00 AM and 11:59 PM).

City of London (By-Law No. PH-18)

In 2012, the City of London amended its Public Nuisance By-Law to include nuisance party provisions, including:

- A comprehensive definition of "nuisance party";
- The authority to order all persons at a nuisance party who do not reside on the premises to vacate;
- The authority to restrict any person (including, but not limited to, a tenant or landlord) from sponsoring, conducting, continuing, hosting, creating, allowing, causing, permitting or attending a "nuisance party"; and
- The authority for officers to close a highway, and once closed, the authority to restrict the common law right of passage by any persons to that highway and the common law right of access to those whose residence abuts the highway.

City of Guelph (By-Law No. 2013-19557)

In 2013, the City of Guelph enacted a Party Nuisance By-Law and prohibitive provisions, including:

- The authority, in addition to charging any persons, to impose a fee upon any person involved in a "nuisance party", including a property owner, to cover

- any administrative and enforcement costs incurred by the City due to responding and addressing the “nuisance party”. Additionally, imposed fees that remain unpaid may be added to the property owner’s taxes;
- An interpretation section outlining how the By-Law is meant to function in relation to other City By-Laws; and
- A more focused view of addressing “nuisance parties”.

City of Brampton (By-Law 136-2018)

In 2018, the City of Brampton enacted a standalone Public Nuisance By-Law with prohibitive provisions, including:

- A simplified definition of “nuisance party”;
- The authority for officers to issue an order to the person who contravened the By-Law, or the owner of the land on which the contravention occurred, to discontinue the public nuisance and nuisance party; and
- In 2019, the Public Nuisance By-Law was amended by By-Law 219-2019 to be subject to the Administrative Penalties By-Law 218-2019.

City of Kingston (By-Law No. 2018-53)

In 2018, the City of Kingston enacted By-Law No. 2018-53, a standalone By-Law to regulate nuisance parties, including:

- A comprehensive definition of “nuisance party”;
- An interpretation section outlining the purpose and intent of the By-Law in relation to other City By-Laws;
- The authority for officers to charge any persons involved in a “nuisance party”;
- The authority for the Chief of Police, or his or her designate, to declare a social gathering a “nuisance party”; and
- An outline of the contents of the warning notice which can be issued by officers to property owners.

Municipality	Set Fine Amount
City of Brampton (General Public Nuisances)	\$500.00
City of Guelph (Standalone By-Law)	\$750.00
City of Kingston (Standalone By-Law)	\$500.00
City of London (Standalone By-Law)	\$750.00
City of Waterloo (General Public Nuisances)	\$450.00

Overall, the set fines associated with Public Nuisance and Nuisance Party By-Laws in other comparable Ontario municipalities can range from \$450.00 to \$750.00 for

“sponsoring, conducting, continuing, hosting, creating, causing, allowing or permitting a Nuisance Party” with lower fines being typical for “attending”. A higher fine is seen as a necessity to achieve general deterrence to those who are aware of the financial consequences, while alternatively; a higher fine acts as a specific deterrent to those from repeating these explicit nuisance behaviours.

PROPOSED CITY OF HAMILTON BY-LAW

Similar to the regulations in the above-mentioned municipalities, the proposed By-Law in Appendix “A” to Report PED22156 would make it an offence for any person who sponsors, conducts, continues, hosts, creates, causes, allows, permits or attends a nuisance party. Under the proposed By-Law, an officer may issue a charge to any person, who is an owner, occupant, tenant, or who otherwise has rightful possession of a premises, who permits a nuisance party. To be consistent with neighbouring municipalities, the proposed By-Law offers a definition of “Nuisance Party” which is in line with other Nuisance Party By-Laws.

With regards to enforcement, similar to other Ontario municipalities, approval for fines and short-form wording will be sought with the Ministry of the Attorney General as seen in Appendix “C” to Report PED22156. In addition to fines, staff also propose to create administrative penalties as seen in Appendix “B” to Report PED22156.

It is important to note that while the proposed By-Law would provide an additional tool for municipal By-Law officers to fine those who host or participate in a nuisance party, the primary response would remain with the Hamilton Police Service to lead enforcement efforts and the dispersal of nuisance parties, with priority placed on public safety.

The proposed enforcement process for the Nuisance Party By-Law is as follows:

1. Nuisance party declared by Chief of Police or their designate (threshold requires four characteristics of a nuisance party detailed in the proposed Bylaw is met).
2. Verbal order issued by Hamilton Police Service officers to person(s) sponsoring, conducting, continuing, hosting, creating, causing, permitting or attending nuisance party;
3. Physical order issued by MLE or HPS officers to property owner(s) or tenants(s). Orders shall contain:
 - i. location of premises;
 - ii. particulars of the contravention of By-Law; and
 - iii. date and time to comply with order.

4. If order not complied with, nuisance party shall be dispersed by Hamilton Police Services officers;
5. MLE officers issue charges and/or summons for By-Law contraventions.

In addition to the potential for fines, the proposed By-Law will assist in providing a means of cost recovery through remedial costs.

Remedial costs: (under section 446 of the *Municipal Act, 2001*) would require persons who “sponsor, conduct, continue, host, create, cause, allow or permit” a nuisance party to pay for a portion of the City’s costs of ending the nuisance party. Examples of costs to end a nuisance party could include the costs to disperse a crowd, including special equipment (e.g. for removing persons off roofs).

Through the remedial cost provisions, the proposed By-Law would be an effective means of recovering some costs associated with addressing nuisance parties occurring on private property through the City’s ability to place remedial costs on the tax roll. However, this would be limited to occurrences where the nuisance party occurred on private property. In relation to large unsanctioned gatherings, it is worth highlighting that it is not anticipated that the proposed By-Law would recover a substantial percentage of City operational costs. First, due to the nature of large unsanctioned gatherings, police are required to attend these events and will always have an associated cost. Second, it may not be feasible to determine which persons are responsible for “sponsoring, conducting, continuing, hosting, creating, causing, allowing or permitting” a nuisance party, as these events predominately take place on public streets. Third, large unsanctioned gatherings are predominately advertised over social media, making it difficult to determine who organized the event. Fourth, due to the size of large unsanctioned gatherings, the volume of attendees may be in the thousands, who trespass onto private property, thus even though a private property may be used during a nuisance party, it does not necessarily involve the property owner or occupants.

Despite these limitations, the inclusion of remedial costs allows for partial cost recovery for City services, may act as a deterrent for those considering hosting or creating a Nuisance Party, and may encourage property owners/landlords to amend rental lease conditions for tenants to preclude these types of nuisance behaviours on the property.

ENFORCEMENT STRATEGY

Based on consultation with Ontario municipalities with Nuisance Party By-Laws in effect, it was reported that operational best practices consist of:

1. the enactment of an area-specific “University District Safety Initiative”; and,
2. a comprehensive communication plan involving all community stakeholders.

A “University District Safety Initiative” in relation to a Nuisance Party By-Law involves areas where large unsanctioned gatherings are recurrent. During specific time periods during the year; specifically, St. Patrick’s Day, Homecoming and “Fake Homecoming”, the “University District Safety Initiative” would be in effect and nuisance parties within them would be subject to a zero-tolerance approach, acting to minimize the negative effects of an ongoing nuisance party and ensuring those involved are held accountable.

Following best practices and feedback from community partners, the proposed University District Safety Initiative for the City of Hamilton would encompass the western section of the Westdale neighborhood and the Dalewood neighborhood (see Appendix “D” to Report PED22156).

To inform and educate the public of the enforcement options provided by the proposed Nuisance Party By-Law and the designation of areas as part of a “University District Safety Initiative”, it is recommended that a comprehensive communication plan be developed and implemented in cooperation with the following community stakeholders:

- Hamilton Fire Department
- Hamilton Paramedic Service
- Hamilton Police Services
- Licensing & By-Law Services
- McMaster University
 - McMaster Students Union

Based on the best practices of municipalities with similar Nuisance Party By-Laws in place, each community partner utilizes their available communication platforms (i.e. official website, social media, media releases) to provide information related to their respective areas as part of an overarching educational period leading into Homecoming 2022 events, with the following overall objectives:

1. educate residents, property owners, tenants and the post-secondary student body of the regulations and prohibitions of the proposed By-Law;
2. inform of the available enforcement options available to officers; and,
3. notify which communities will be designated under the “University District Safety Initiative” during specific time periods; and outline the associated safety and health risks common with large unsanctioned gatherings (e.g. signs of alcohol poisoning, signs of drug overdose, etc.).

ALTERNATIVES FOR CONSIDERATION

Alternative #1 – Do Not Adopt the By-Law

Council may consider not adopting the By-Law, and enforcement staff may rely on the regulatory mechanisms available with existing statutes and By-Laws. Criminal charges

may be issued by Hamilton Police under provincial statutes (i.e. *Cannabis Control Act, Liquor Licence Control Act, Highway Traffic Act*) and By-Law charges for noise, public nuisances and parking can continue to be enforced where officers deem it appropriate.

Alternative #2 – Adopt the By-Law Effective Immediately

Council may consider enacting the proposed Nuisance Party By-Law effective immediately as follows:

- (a) That the draft Nuisance Party By-Law to regulate nuisance parties, attached as Appendix “A” to Report PED22156 which has been prepared in a form satisfactory to the City Solicitor, be adopted; and
- (b) That 0.5 FTE for a supervisor position and funding for the necessary training of By-Law staff within the Licensing and By-Law Services Division to administer the Nuisance Party By-Law be referred to the 2023 Operating Budget.

Should the By-Law be adopted, and the staffing resources not ultimately be approved through the 2023 Operating Budget, staff would need to re-prioritize enforcement activities to ensure current priorities are met and consistent service levels are maintained.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

APPENDICES AND SCHEDULES ATTACHED

- Appendix “A” to Report PED22156 – Draft Nuisance Party By-Law
- Appendix “B” to Report PED22156 – Draft Amendments to By-Law 17-225
- Appendix “C” to Report PED22156 – Draft Short-form Wording
- Appendix “D” to Report PED22156 – Proposed University District Safety Initiative
- Appendix “E” to Report PED22156 – Costs of St. Patrick’s Day, 2022